
United States
Circuit Court of Appeals
For the Ninth Circuit.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation,

Appellant,

VS.

CLARA MILLS, GEORGE F. STEELE, Insurance
Commissioner of the State of Idaho, et al.,

Appellees.

Transcript of Record

*Upon Appeal from the United States District Court
for the District of Idaho, Southern Division.*

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IN EQUITY—NO. 529.

*In the District Court of the United States for the
District of Idaho, Southern Division.*

AMERICAN SURETY COMPANY OF NEW
YORK, a corporation,

Plaintiff,

vs.

CLARA MILLS, W. P. EASTWOOD, A. J. SULLIVAN, CETH D. PEACOCK, JOHN C. BAUGH, T. J. REED, JOSEPH W. FULD, ANDREW McMONIGLE, MRS. P. DONOHUE, MRS. M. M. TIPTON, FRANK McDANIELS, RUSSEL B. WESTMAN, FRED H. POVEY, LOUIE JOE, CHING BING, HARRIS FURNITURE CO., MRS. C. E. HARRIS, JIM RIGGI, E. R. RICHARDS, HAILEY HOSE CO., CHARLES CUNEO, FRANK MORRIS, HAILEY BUTCHER CO., L. J. McCONNELL, JULIA HAUPT, JOHN MIZER, JOHN SEYMOUR, MRS. T. POVEY, W. J. OLIVER, PELKY & CO., JOHN PUGEL, ENRIQUE E. JOYWECHEO, MARGARET SUTHERLAND, ELLEN WALKER, H. WHITMORE, AUGUSTUS ANACABEE, VINCENTE GUIASOLA, MAGGIE J. PORTER, F. R. GOODING, assignee of Richard Jones and E. H. Baker, CHARLES CUNEO, assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli and Giulio Pallinio, PETER SNIDER, assignee of G. Guigliani, Mark

Faladora, C. Juliean and Joe Fereta, F. W. NITSCHKE, Treasurer of F. O. E. Lodge, SULLIVAN & SULLIVAN, assignee of I. N. Sullivan, J. J. McFADDEN, administrator, with will annexed, of the estate of Frank E. Foote, deceased, McFADDEN & BRODHEAD, Trustees, M. E. MALLORY, Treasurer of Hailey Baseball Club, E. DAFT, Receiver of Idaho State Bank, assignee of J. S. Whitton, WILLIAM LEONARD, L. A. DITHMER, J. M. McPHERSON, ROBERT FRANKLIN, J. F. McCOY, E. W. KLEINMAN, FRIEDMAN COMPANY, Ltd., a corporation, LUCILE FRIEDMAN, S. J. BENSON, AUKE-MA DRUG COMPANY, M. J. DALY, BELLEVUE STATE BANK, a corporation, assignee of Jos. Werry, HARRY J. ALLEN, MRS. W. J. LAMME, W. J. LAMME, ANNIE I. HARRIS (formerly Annie I. Miller), and GEORGE F. STEELE, Insurance Commissioner of the State of Idaho,

Defendants.

BILL OF COMPLAINT.

*To the Honorable, the Judges of the District Court
of the United States, for the District of Idaho,
Southern Division:*

The American Surety Company of New York, a corporation organized and existing under and by virtue of the laws of the State of New York, and a citizen and resident of said State of New York, with its principal place of business in the City of New

York, said State, brings this its bill of complaint against Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vicente Guisasola, Maggie J. Porter, F. R. Gooding, assignee of Richard Jones and E. H. Baker, Charles Cuneo, assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli and Gialio Pallinio, Peter Snider, assignee of G. Guigliani, Mark Faladora, C. Juliean, and Joe Fereta, F. W. Nitschke, Treasurer of F. O. E. Lodge, Sullivan & Sullivan, assignee of I. N. Sullivan, J. J. McFadden, administrator, with will annexed, of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, E. Daft, Receiver of Idaho State Bank and assignee of J. S. Whitton, William Leonard, L. A. Dithmer, J. M. McPherson, Robert Franklin, J. F. McCoy, E. W. Kleinman, Friedman Company, Ltd., a corporation, Lucile Friedman, S. J. Benson, Aukema Drug Company, M. J. Daly, Bellevue State Bank, a corporation, assignee of Jos. Werry, Harry J. Allen, Mrs.

W. J. Lamme, W. J. Lamme, Annie I. Harris (formerly Annie I. Miller), and George F. Steele, Insurance Commissioner of the State of Idaho; and there-upon your orator complains and alleges:

I.

That the said complainant, American Surety Company of New York, during all the times herein-after mentioned was, and now is, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and is a citizen of said State, with its principal place of business in the City of New York, State of New York.

II.

That the above-named defendants are, and each of them is and was at the time of the commencement of this action, excepting the defendant Annie I. Harris (formerly Annie I. Miller) who is and was at the time of the commencement of this action a resident and citizen of the State of California, residents and citizens of the State of Idaho, residing in Blaine County, State of Idaho, excepting the said Annie I. Harris (formerly Annie I. Miller) who is and was during the times herein mentioned a resident of Los Angeles, State of California, and excepting the defendant George F. Steele, who is and was at the time of the commencement of this action a resident of the County of Ada, State of Idaho.

III.

That the complainant American Surety Company of New York is doing business in the State of Idaho

under and by virtue of a compliance with the laws of the State of Idaho; and at all the times herein mentioned has been and now is qualified and authorized to transact a general surety business in the State of Idaho.

IV.

That the said defendant George F. Steele is now the duly qualified and acting Insurance Commissioner of the State of Idaho.

V.

That this suit is of a civil nature in equity, and is wholly between citizens of different states, and that the amount in controversy herein exceeds the sum of Three Thousand Dollars (\$3,000.00) exclusive of interest and costs.

VI.

That one William G. Cruse was duly appointed by the Governor of the State of Idaho, by and with the advice and consent of the Senate of said State, Bank Commissioner in and for the State of Idaho on or about the 6th day of March, 1909, for a period of four years from and after the said 6th day of March, 1909.

VII.

That under the provisions of the statutes of Idaho in such cases made and provided, and on or about the 15th day of March, 1909, the said William G. Cruse, as principal, and this complainant American Surety Company of New York, as surety, executed to the State of Idaho that certain bond or obligation

in writing, a copy of which bond is hereto attached, marked Exhibit "A," and by reference made a part hereof.

VIII.

That on or about the 31st day of August, 1910, the Idaho State Bank, a corporation organized and existing under the laws of the State of Idaho and doing a general banking business at Hailey, Blaine County, Idaho, at which time all of the said defendants, save and except the said George F. Steele, were creditors and depositors of such bank, closed its doors and suspended payment, and at that time was and ever since has been unable to meet the demands of its said creditors or depositors in the usual and ordinary course of business, or at all.

IX.

That on or about the 31st day of August, 1912, the State of Idaho, for the use and benefit of those certain defendants above-named, in the respective amounts set opposite such respective names, to-wit:

Clara Mills	\$ 776.94
W. P. Eastwood	1,302.66
A. J. Sullivan	310.27
Ceth D. Peacock	595.26
John C. Baugh	166.24
T. J. Reed	1,518.75
Joseph W. Fuld	301.52
Andrew McMonigle	238.09
Mrs. P. Donohue	249.13
Mrs. M. M. Tipton	72.61

Frank McDaniels	475.09
Russel B. Westman	471.75
Fred H. Povey	238.09
Louie Joe	1,078.60
Ching Bing	1,190.52
Harris Furniture Co.	621.51
Mrs. C. E. Harris	694.38
Jim Riggi	106.55
E. R. Richards	124.73
Hailey Hose Co.	29.75
Charles Cuneo	504.73
Frank Morris	178.58
Hailey Butcher Co.	60.77
L. J. McConnell	119.02
Julius Haupt	1,250.08
John Mizer	300.48
John Seymour	250.96
Mrs. T. Povey	119.02
W. J. Oliver	294.06
Pelky & Co.	615.43
John Pugel	357.16
Enrique E. Joywecheo	476.20
Margaret Sutherland	238.09
Ellen Walker	238.09
H. Whitmore	1,226.20
Augustus Anacabee	357.16
Vincente Guisasola	547.64
Maggie J. Porter	193.44
F. R. Gooding, Assignee—	
Richard Jones	190.48
E. H. Baker	147.60

Charles Cuneo, Assignee—

Fidela Rsteinsia	119.02
Leo Bott	86.30
Thomas Johnson	59.50
Louis D. Paoli	39.26
Giulio Pallinio	136.90

Peter Snider, Assignee—

G. Guigliani	106.55
Mark Faladora	178.58
C. Juliean	86.30
Joe Fereta	43.44

F. W. Nitschke, Treasurer F. O. E. Lodge 351.58

Sullivan & Sullivan, Assignee I. N. Sullivan
van 197.62

J. J. McFadden, Administrator, with will
annexed, of the estate of Frank E. Foote,
deceased 1,374.24

McFadden & Brodhead, Trustees 372.60

M. E. Mallory, Treasurer of Hailey Baseball
Club 649.55

E. Daft, Receiver, Assignee J. S. Whitton. 595.26

commenced an action in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, by filing a complaint against the complainants herein, American Surety Company of New York, to recover from said American Surety Company under the penalty specified in said bond (Exhibit "A") the respective amounts above set forth. And this complainant American Surety Company on the 7th day of October, 1912, and before the time in which this complainant was

required by the laws of the State of Idaho or the rules of such State Court in which said suit was brought to answer or plead to the complaint of plaintiffs filed therein had expired, duly served a written notice of petition and bond for removal of said cause to this Court, including copy of said petition and bond for removal, upon counsel of record for plaintiffs in said action; and on the 8th day of October, 1912, and before the time in which this complainant was required by the laws of said State or the rules of said Court to answer or plead to the complaint of plaintiffs filed therein had expired, duly filed the said petition and bond for removal and such written notice with the Clerk of said Court, in full compliance with the provisions of Section 29 of the Judicial Code of the United States, and on the 28th day of October, 1912, complainant filed with the Clerk of this Court a certified copy of the record in such suit in full compliance with the provisions of said Section 29 of the Judicial Code; that pending the determination of such right of removal, and on the 16th day of October, 1912, the default of this complainant was entered by the Clerk without notice to or knowledge thereof by this complainant; and such default was entered in said cause notwithstanding the fact that this complainant had filed such petition and bond for removal and had served and filed such written notice required by said Section 29 of the Judicial Code, and while complainant was in good faith removing said cause to this Court and before the jurisdiction of this Court had been determined, and by

reason thereof this complainant was prohibited from defending against the said action; that on May 19, 1913, judgment was entered against this complainant on such default for the sum of \$22,624.33 and in favor of the plaintiffs in said action for the respective amounts above stated, and without fault or negligence on the part of this complainant, although this complainant believed, and was so advised by its counsel and so alleges the fact to be, that it had a good and meritorious defense to the said action, which, by reason of such default, it was denied the right to plead or set up in said cause.

X.

That on or about the 30th day of August, 1913, the State of Idaho, for the use and benefit of those certain defendants above named, in the respective amounts set opposite said respective names, to-wit:

L. A. Dithmer	\$ 391.96
J. M. McPherson	125.74
Robert Franklin	164.00
J. F. McCoy	702.00
E. W. Kleinman	240.15
Friedman Company, Ltd.	131.82
Lucile Friedman	97.79
S. J. Benson	568.28
Aukema Drug Company	264.09
M. J. Daly	388.14
Bellevue State Bank, Assignee Jos. Werry	410.00
Harry J. Allen	36.90
Mrs. W. J. Lamme	463.30

W. J. Lamme	97.79
Annie I. Harris (formerly Annie I. Miller)	38,271.65

and for a total sum of about \$56,000.00, including interest from the first day of September, 1910, at the rate of seven per cent. (7%) per annum, commenced an action in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, against this complainant, American Surety Company of New York, to recover from this complainant under the penalty specified in said bond (Exhibit "A") the respective amounts above set forth, which action is still pending and undetermined in the said Court.

XI.

That there is now pending in this court and undetermined that certain action at law, wherein the State of Idaho, to and for the use and benefit of William Leonard, is plaintiff, and this complainant American Surety Company of New York, is defendant, which action was brought to recover from this complainant the sum of \$9,656.93 under the penalty contained in the said bond, Exhibit "A."

XII.

That the said judgment so recovered in the said State Court for the said sum of \$22,624.33, together with interest thereon, and the amount claimed in the said action now pending and undetermined in the said State Court for the said sum of about \$56,000.00, with interest thereon, and the amount

claimed in the said action now pending and undetermined in this court for the sum of \$9,656.93, with interest thereon, aggregate upwards of \$90,000.00, or an amount exceeding by more than \$40,000.00 the total penalty of the said bond, Exhibit "A".

XIII.

That the said William Leonard and the defendants named in paragraph X hereof, plaintiffs in the action pending in said State Court, for Blaine County, Idaho, contend that their said claims are valid claims against this complainant under said bond (Exhibit "A"), and that they are entitled to judgment against complainant for the full amount of their said claims, with interest thereon, making in the aggregate the sum of approximately \$69,000.00; that the claims so made against this complainant in the said actions are based largely upon questions and legal propositions which have not heretofore been adjudicated or determined by the courts, and it is impossible for this complainant, because of the nature of the claims which are being made against it, to determine the extent of its liability under said bond (Exhibit "A") and the aggregate amount of the valid claims against it under said bond until the said actions so pending as aforesaid have been finally determined; but complainant fears, and has reason to fear, that judgment or judgments will be rendered against it on said bond, and that the amount of such judgments may be in excess of the penal sum of such bond, and that complainant, unless protected by this Honorable

Court as hereinbefore prayed, may be compelled to pay far in excess of the penal sum of said obligation (Exhibit "A").

XIV.

That the judgment so obtained against this complainant for the sum of \$22,624.33, for the use and benefit of the persons named in paragraph IX hereof, was wrongfully obtained through accident and mistake without fault or negligence of complainant, and particularly in this, that while complainant was in good faith and in full compliance with the provisions of Section 29 of the Judicial Code removing said action from said State Court to the Federal Court for said District, the attorneys for said defendants prevailed upon the Clerk of said State Court, without the knowledge of the said Court or of this complainant, to enter complainant's default so that complainant would be deprived of the right of trial on the merits in said State Court; and this suit involves the construction of said Section 29 of the Judicial Code and other sections of said Code and the right of said Clerk to enter such default while the proceedings for removal were so pending, and said judgment so obtained is unjust, inequitable, unconscionable and invalid because of the manner in which it was obtained, and the use which the defendants named in said paragraph IX intend to make and will make of said judgment in order to obtain the payment of the full amount thereof before the claims of the said Leonard

and the other defendants, named in paragraph X hereof, and before the amount of the dividends received by said defendants, as hereinafter set forth, have been ascertained and determined, is likewise unjust, inequitable, unconscionable and wrong, not only as against this complainant but as against the other defendants herein named, who have actions pending against this complainant, as aforesaid, under said bond.

XV.

That the said defendants, named in paragraph IX hereof, have collected since commencing their said action against this complainant, as well as since recovering the said judgment, dividends from the Receiver of said Idaho State Bank at Hailey, Idaho, on the claims which they made against this complainant and on which judgment was recovered, as aforesaid, and have received from said receiver on account of said claims large sums of money, the full amount thereof being unknown to this complainant; but complainant is informed and believes and alleges the fact to be, that the sums so received by said defendants, named in paragraph IX hereof, aggregate several thousand dollars, and that none of said dividends or payments so received have been credited on said judgment, notwithstanding said judgment was obtained for the full amount which the said defendants had on deposit with said Bank at the time it closed its doors and suspended payment, as aforesaid.

XVI.

That the said William Leonard and the defendants named in paragraph X hereof, who have actions now pending against this complainant as aforesaid for more than the full amount of the penalty named in said bond (Exhibit "A"), contend that the judgment hereinbefore mentioned and recovered against this complainant, to and for the use and benefit of the defendants named in paragraph IX hereof, is unconscionable, inequitable and void as against the said William Leonard and the defendants named in paragraph X hereof, for the reason that the same was recovered and obtained in the manner hereinbefore stated, and for the reason that the same was not obtained after a trial on the merits, and for the further reason that the said William Leonard and the other defendants named in paragraph X hereof, whose suits are now pending as aforesaid, were necessary and indispensable parties thereto, as they had claims against complainant under the same bond for more than the full amount of the penal sum therein named, and they will therefore sustain a loss to the extent that any sum whatsoever is recovered under said obligation or bond by the defendants named in paragraph IX hereof; and the said William Leonard and the other defendants named in paragraph X hereof deny the right of this complainant to pay any sum whatsoever in satisfaction of said judgment, obtained as aforesaid, and threaten to and will, as this complainant verily believes, hold this complainant liable in damages for any and all pay-

ments made under said judgment or in satisfaction thereof, to the extent that such payment or payments reduces the amount that may be recovered under said bond (Exhibit "A") by said William Leonard and the defendants named in paragraph X hereof.

XVII.

That complainant is informed and believes, and so alleges the fact to be, that the said William Leonard and the defendants named in paragraph X hereof have likewise since the commencement of said actions received dividends from the Receiver of said Idaho State Bank at Hailey, Idaho, on account of the claims on which their said actions are based, to an amount aggregating several thousand dollars, the total sum so received by said defendants being unknown to this complainant; that because of the nature of the claims so made against this complainant by the said defendants, and each of them, as aforesaid, and because of the dividends so received by said defendants and for which no credit has been given this complainant, it is impossible for this complainant to determine what sum or amount, if any, is due said defendants, or any of them; but complainant alleges the fact to be that under the law and the principles of equity, good conscience, and fair dealing all persons, parties and individuals who may have or establish rights under said bond (Exhibit "A") should only have, recover or receive their pro rata part of the amount of their respective claims, if the total amount of the valid claims made against complain-

ant exceeds the penal sum named in said bond, and that all rights under said bond relate back to the execution thereof, and that all of said claims arise out of the same transaction and as of the same time, and no claim or claimant has preference or priority over another. But this complainant, for the reasons hereinbefore stated, cannot safely pay any of said claims until the liability of complainant in all of said actions, pending and under the judgment heretofore recovered has been finally determined and the total amount due under said bond ascertained, and until the pro rata part payable to each of said claimants has been ascertained, in the event the aggregate of all valid claims exceeds the penalty of said bond (Exhibit "A").

XVIII.

That complainant is advised by its counsel, and so alleges the fact to be, that the action brought to and for the use of the defendants named in paragraph IX hereof, and which complainant sought to remove from said State Court to the Federal Court, was in fact a removable cause, and a cause which this complainant was entitled to remove to this Court under Section 29, and other sections, of the Judicial Code of the United States, and that it had a good and meritorious defense to said action, which it was prevented from setting up in said cause because of the wrongful and unconscionable entry of such default and the refusal of the said State Court to set aside said default when application was made therefor by com-

plainant. That the defendants, named in paragraph IX hereof, through their counsel, opposed the setting aside of said default, notwithstanding complainant requested the Court in which said action was pending to set aside such default on such terms as would be just and fair to said defendants, to and for whose use and benefit said action was brought; and complainant, defendant in said action, was at all times able, ready and willing to pay into said State Court such sum as said State Court might impose as terms for setting aside such default, and such damages as had been or would be sustained by the plaintiffs in said action, or the persons for whose use and benefit the same was brought, because of the setting aside of such default, all of which offers were refused by the defendants named in paragraph IX hereof and their attorneys, and said defendants and their attorneys at all times declined to permit such default to be set aside, and declined to permit this complainant, defendant in said action, to file an answer in said cause or to have a trial therein on the merits.

XIX

That complainant is advised by its counsel and believes that it has a good and meritorious defense to many, if not all, of the claims which have been made against it by the said defendants, but for the reasons hereinbefore stated it is impossible for complainant to determine the aggregate amount of the valid claims that may be established against it, and until the same have been finally determined com-

plainant cannot know and cannot ascertain whether the aggregate of the valid claims against it will exceed the penalty named in said bond, and the amount to be paid by complainant under said bond cannot be ascertained until an accounting has been had of the sums that have been received by the said defendants as dividends from the Receiver of said Idaho State Bank on the said judgment and on the claims which are being made against this complainant, as aforesaid, and until the validity of said claims have been established either in the actions now pending, as aforesaid, or in other appropriate proceedings.

XX.

That complainant is informed and believes, and alleges the fact to be, that the defendants named in paragraph IX hereof, and for whose use and benefit the said judgment was obtained, as aforesaid, intend to apply to the defendant George F. Steele, as Insurance Commissioner of the State of Idaho, to cancel and revoke the certificate of authority of this complainant to do a surety business within the State of Idaho, unless this complainant shall pay said unconscionable, void, and inequitable judgment on or before the 17th day of May, 1915, the same being ninety days after the filing of the remittitur from the Supreme Court in the action in which said judgment was obtained, and as provided in Sections 90, 92 and 93 of an Act of the Legislature of the State of Idaho relating to an Insurance Department in said State, approved March 14, 1911, Session Laws of the

State of Idaho for 1911, pages 732 to 781; and complainant verily believes that the said defendant, George F. Steele, as Insurance Commissioner, will, unless restrained by this Honorable Court, on or about the 17th day of May, 1915, revoke and cancel the certificate of authority of this complainant to do business in the State of Idaho, and revoke the right of this complainant to do business in said State unless complainant pays said judgment in full; that the cancellation of the certificate of authority of this complainant to do business in the State of Idaho, and the revocation of its right to do business in said State will do great and irreparable injury to this complainant, and will damage this complainant in a sum far in excess of Three Thousand Dollars (\$3,000.00); that this complainant has an unimpaired capital and surplus of over Six Million Dollars, and is financially responsible, and is able, ready, and willing to pay all valid claims that may be established against it under said bond (Exhibit "A") as soon as the full amount thereof has been determined and the share or amount due the several defendants ascertained, so that the complainant can safely pay the same without incurring additional liability to other claimants, defendants hereto, or subjecting itself to suits for damages for having paid any of said claimants more than his pro rata part of the penalty named in said bond.

XXI.

That unless the said George F. Steele, as Insurance Commissioner of the State of Idaho, be enjoined and

restrained from taking any action canceling or annulling the certificate of authority of this complainant to do business in the State of Idaho, or revoking or in any manner impairing its right to do business in said State as a surety company, and unless the defendants named in paragraph IX hereof be enjoined and restrained from taking any action or instituting any proceeding for the collection of said judgment or enforcing the payment thereof, and the other defendants herein named be likewise enjoined and restrained from enforcing any judgment which they may obtain until all claims so made against this complainant by the said defendants have been adjudicated and determined and an accounting had of the dividends received by said defendants, and the amount to be paid to the said defendants definitely ascertained and determined, this complainant will be compelled, in order to preserve and protect its right to do business in the State of Idaho, to pay said void and unconscionable judgment in full, and the said defendants named in paragraph IX hereof will receive a sum largely in excess of what they are entitled to or could receive if an accounting were had, and complainant will be subjected to claims and suits on the part of the other defendants for having paid to the defendants named in paragraph IX hereof moneys which the other defendants herein claim they are entitled to receive; and complainant will by such action of the said defendants suffer great and irreparable injury, and may be compelled to pay a sum in excess of the penalty of said bond and in excess of the

amount justly due the said defendants; and complainant will further be involved in a multiplicity of suits and actions, and will be deprived of its property and rights without due process of law in contravention of the provisions of the Fifth Amendment to the Constitution of the United States and Section 1 of the Fourteenth Amendment to said Constitution.

XXII.

That by reason of the premises, this complainant has no plain, speedy or adequate remedy at law, but can only have relief in a court of equity.

XXIII.

That while the State of Idaho is named as plaintiff in each of the actions hereinbefore described, to and for the use and benefit of the several defendants herein named, it is nevertheless expressly alleged in the complaint in each of said actions that the State of Idaho has no interest whatsoever in the claims on which said actions are based, or in any judgment recovered or that may be recovered in such actions; and complainant alleges the fact to be that the State of Idaho has no interest whatsoever in said judgment or in the said actions, but is acting in said actions and in all matters connected therewith at the instance and request and for the use and benefit of the parties designated in the complaint in each of said actions as the parties for whose use and benefit such action was brought or is being prosecuted.

In Consideration Whereof, and forasmuch as this complainant is remediless in the premises according

to the strict course of the common law, and can only have relief in a court of equity, this complainant prays the aid of this Honorable Court as follows:

(a) That the defendants Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vincente Guisasola, Maggie J. Porter, F. R. Gooding, Assignee of Richard Jones and E. H. Baker, Charles Cuneo, Assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli, and Giulio Pallinio, Peter Snider, Assignee of G. Guigliani, Mark Faladora, C. Juliean and Joe Fereta, F. W. Nitschke. Treasurer of F. O. E. Lodge, Sullivan & Sullivan, Assignee of I. N. Sullivan, J. J. McFadden, Administrator, with the will annexed, of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, and E. Daft, Receiver of Idaho State Bank and Assignee of J. S. Whitton, and their agents, attorneys, assignees and all persons acting for them, or either of them, may be restrained and enjoined,

preliminary until final hearing and perpetual thereafter, from enforcing or taking any action whatsoever for the collection of that certain judgment recovered for their use and benefit in the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County on the 19th day of May, 1913, unless the same shall hereafter be held and decreed to be a valid and enforceable judgment, and then only for the amount which it may be adjudged and decreed this complainant should or ought to pay to the defendants above-named after deducting from said judgment and crediting complainant with all dividends received by said defendants from the Receiver of the Idaho State Bank at Hailey, Idaho.

(b) That the defendant George F. Steele, as Insurance Commissioner of the State of Idaho, and his successor and successors in office, and all persons acting for him or in his behalf, place or stead, be restrained and enjoined, preliminary until final hearing and perpetual thereafter, from canceling, revoking, annulling, or in anywise impairing the certificate, right or authority of the complainant, American Surety Company of New York, from doing business in the State of Idaho as a surety company, or otherwise, for failure of this complainant to pay the full amount of the judgment recovered as aforesaid for the use and benefit of the said Clara Mills and the other defendants named in paragraph (a) hereof, until it has been adjudged and decreed that said judgment is a valid and enforceable obligation

against this complainant, and until the amount, if any, has been ascertained and determined (after an accounting had and made as herein prayed) which this complainant should or ought to pay to the said defendants, or any of them.

(c) That the defendants William Leonard, L. A. Dithmer, J. M. McPherson, Robert Franklin, J. F. McCoy, E. W. Kleinman, Friedman Company, Ltd., Lucile Friedman, S. J. Benson, Aukema Drug Company, M. J. Daly, Bellevue State Bank, Assignee of Jos. Werry, Harry J. Allen, Mrs. W. J. Lamme, W. J. Lamme and Annie I. Harris (formerly Annie I. Miller) be restrained and enjoined, preliminary until final hearing and perpetual thereafter, from enforcing any judgment that may be obtained by them, or any or either of them, in any action prosecuted for the use and benefit of said defendants, or any or either of them, until an accounting has been had and the total liability of complainant under the said bond (Exhibit "A") has been ascertained and determined and proper credit allowed said complainant for all dividends received by said defendants from the Receiver of said Idaho State Bank of Hailey, Idaho, and the amount which should or ought to be paid by complainant to the defendants has been ascertained and determined.

(d) That an account may be taken in this behalf by and under the direction of this Court, of the whole of the indebtedness, principal and interest, due from this complainant to the said defendants, or any of

them, and of the dividends received by said defendants, and each of them, from the Receiver of said Idaho State Bank of Hailey, Idaho, and the amount ascertained and determined which this complainant should or ought to pay to the said defendants because of the obligation assumed by this complainant or liability created under or by virtue of said bond (Exhibit "A").

(e) That complainant may have such other and further relief in the premises as the nature of the case may require, and as shall be proper and agreeable to the principles of equity and to this Court, and for its costs herein.

And may it please your Honors to grant to your orator a Writ or Writs of Subpoena, and other process, directed to the Marshal of said District, commanding him that he summon the defendants hereinabove named to be and appear in this Court on a certain day therein named, and under a certain penalty therein to be limited and stated, and then and there, singly and severally, to make full, true and direct answer to this Bill of Complaint (but not under oath, such answer under oath being expressly waived as to each of said defendants), and to show cause, if any they have, why the prayer of this Bill of Complaint should not be granted according to the rules and practices of this Honorable Court, and to stand ready to perform and abide by such order, direction or decree as may be made against them in the premises and as to your Honorable Court shall seem meet.

And your orator will ever pray, etc.

AMERICAN SURETY COMPANY
OF NEW YORK,

By RICHARDS & HAGA,

Its Solicitors,

Residence: Boise, Idaho.

McKEEN F. MORROW,

Counsel for Complainant,

Residence: Boise, Idaho.

(Duly verified).

EXHIBIT "A".

AMERICAN SURETY COMPANY
OF NEW YORK
CAPITAL AND SURPLUS \$5,000,000.00
BANK COMMISSIONER'S BOND.

Know All Men by These Presents: That we, William G. Cruse of Boise, Ada County, State of Idaho, as principal, and the American Surety Company of New York, a corporation of the State of New York, and doing business in the State of Idaho, as surety, are held and firmly bound unto the State of Idaho in the sum of Fifty Thousand (\$50,000.00) Dollars, lawful money of the United States of America to be paid to the said State of Idaho, for which payment, well and truly to be made, said principal binds himself, his heirs, executors and administrators, and said surety binds itself and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of March, A. D. 1909.

The Condition of the above obligation is such that, Whereas, the above bounden principal, William G. Cruse, was on the 6th day of March, 1909, appointed State Bank Commissioner in and for the State of Idaho for a term of four years, from March 6th, 1909, unless sooner removed.

Now Therefore, if the said William G. Cruse shall well, faithfully and impartially discharge the duties of his office and pay over to the person entitled by law to receive it, all money coming into his hands by virtue of his office, and that he will pay any and all damages and costs that may be adjudged against him under the provisions of Chapter 12, Title 2, Political Code and Chapter 13, Title 4 of the Civil Code of Idaho, and shall well and truly perform all the duties of such office required by any law to be enacted subsequently to the execution of this bond, then this obligation to be void, otherwise to remain in full force and effect.

WM. G. CRUSE.

AMERICAN SURETY COMPANY
OF NEW YORK,

By WESLEY KING,

(Seal)

Res. Vice President.

Attest: Bradley Sheppard,

Agent, Boise, Idaho.

“O. K. McDougal”

Attest: Stanley Whitehead,

Res. Asst. Secretary.

AMERICAN SURETY COMPANY
OF NEW YORK

CAPITAL AND SURPLUS \$5,000,000.00

State of Utah,

County of Salt Lake,—ss.

On the 15th day of March, 1909, personally appeared before me Wesley E. King, Resident Vice President of the American Surety Company of New York, to me known, who being by me duly sworn did depose and say: That he resided in the City of Salt Lake, State of Utah; that he is the Resident Vice President of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said Wesley E. King further said that he was acquainted with Stanley Whitehead and knew him to be one of the Resident Assistant Secretaries of said corporation, that the signature of said Stanley Whitehead subscribed to the said instrument is in the genuine handwriting of the said Stanley Whitehead and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him, the said Wesley E. King, Resident Vice President.

WESLEY E. KING.

Subscribed and sworn to before me this 15th day of March, 1909.

(Seal)

ROBERT F. HERRON,
Notary Public.

My commission expires Aug. 20th, 1912.

(Attached thereto is an extract from the record book of the Board of Trustees of the American Surety Company of New York).

Endorsed: Filed May 6th, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

IN EQUITY—NO. 530.

*In the District Court of the United States, for the
District of Idaho, Southern Division.*

WILLIAM LEONARD,

Plaintiff,

vs.

CLARA MILLS, W. P. EASTWOOD, A. J. SULLIVAN, CETH D. PEACOCK, JOHN C. BAUGH, T. J. REED, JOSEPH W. FULD, ANDREW McMONIGLE, MRS. P. DONOHUE, MRS. M. M. TIPTON, FRANK McDANIELS, RUSSEL B. WESTMAN, FRED H. POVEY, LOUIE JOE, CHING BING, HARRIS FURNITURE CO., MRS. C. E. HARRIS, JIM RIGGI, E. R. RICHARDS, HAILEY HOSE CO., CHARLES CUNEO, FRANK MORRIS, HAILEY BUTCHER CO., L. J. McCONNELL, JULIA HAUPT, JOHN MIZER, JOHN SEYMOUR, MRS. T.

POVEY, W. J. OLIVER, PELKY & CO., JOHN PUGEL, ENRIQUE E. JOYWECHEO, MARGARET SUTHERLAND, ELLEN WALKER, H. WHITMORE, AUGUSTUS ANACABEE, VINCENTE GUIASOLA, MAGGIE J. PORTER, F. R. GOODING, assignee of Richard Jones and E. H. Baker, CHARLES CUNEO, assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli and Giulio Pallinio, PETER SNIDER, assignee of G. Guigliani, Mark Faladora, C. Juliean and Joe Fereta, F. W. NITSCHKE, Treasurer of F. O. E. Lodge, SULLIVAN & SULLIVAN, assignee of I. N. Sullivan, J. J. McFADDEN, administrator, with will annexed, of the estate of Frank E. Foote, deceased, McFADDEN & BRODHEAD, Trustees, M. E. MALLORY, Treasurer of Hailey Baseball Club, E. DAFT, Receiver of Idaho State Bank, assignee of J. S. Whitton, L. A. DITHMER, J. M. McPHERSON, ROBERT FRANKLIN, J. F. McCOY, E. W. KLEINMAN, FRIEDMAN COMPANY, Ltd., a corporation, LUCILE FRIEDMAN, S. J. BENSON, AUKEMA DRUG COMPANY, M. J. DALY, BELLEVUE STATE BANK, a corporation, assignee of Jos. Werry, HARRY J. ALLEN, MRS. W. J. LAMME, W. J. LAMME, ANNIE I. HARRIS (formerly Annie I. Miller), and AMERICAN SURETY COMPANY OF NEW YORK, a corporation,

Defendants.

BILL OF COMPLAINT.

To the Honorable Judge of the District Court of the United States, for the District of Idaho, Southern Division:

William Leonard, a citizen of the State of Idaho, residing in Blaine County, said State, brings this, his bill of complaint, against Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louis Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vincente Guisasola, Maggie J. Porter, F. R. Gooding, assignee of Richard Jones and E. H. Baker, Charles Cuneo, assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli, and Giulio Pallinio, Peter Snider, assignee of G. Guigliani, Mark Faladora, C. Juliean and Joe Fereta, F. W. Nitschke, Treasurer of F. O. E. Lodge, Sullivan & Sullivan, assignee of I. N. Sullivan, J. J. McFadden, administrator, with will annexed, of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, E. Daft, Receiver of Idaho State Bank,

Assignee of J. S. Whitton, L. A. Dithmer, J. M. McPherson, Robert Franklin, J. F. McCoy, E. W. Kleinman, Friedman Company, Ltd., a corporation, Lucile Friedman, S. J. Benson, Aukema Drug Company, M. J. Daly, Bellevue State Bank, a corporation, assignee of Jos. Werry, Harry J. Allen, Mrs. W. J. Lamme, W. J. Lamme, Annie I. Harris (formerly Annie I. Miller), and American Surety Company of New York, a corporation, and thereupon your orator complains and alleges:

I.

That he is the identical William Leonard who is plaintiff in a certain action at law now pending in this court, entitled State of Idaho, to and for the use and benefit of William Leonard, plaintiff, versus American Surety Company of New York, a corporation, defendant, which action was brought to recover from the said defendant, American Surety Company of New York, the sum of \$9,656.93, with interest thereon at the rate of 7% per annum from September 1, 1912, under the penalty contained in that certain bond given by the said American Surety Company of New York as surety for one William G. Cruse, as Bank Commissioner of the State of Idaho, a copy of which said bond is hereto annexed, marked Exhibit "A," and made a part hereof. That the State of Idaho has no interest whatsoever in said action but the same is prosecuted for the sole use and benefit of your orator, and this suit in equity is brought by your orator as ancillary to the said action

at law, now pending and undetermined in this court as aforesaid, and for the purpose of preserving and protecting the rights of your orator under said bond and in said action at law until said action at law can be finally determined.

II.

That on or about the 6th day of March, 1909, the Governor of the State of Idaho appointed said William G. Cruse as Bank Commissioner, in and for the State, and thereafter and on or about the 15th day of March, 1909, under the provisions of the statutes of Idaho in such cases made and provided the said William G. Cruse, as principal, and the said defendant, American Surety Company of New York, as surety, executed to the State of Idaho that certain bond or obligation in writing, a copy of which is hereto attached as Exhibit "A," and thereupon the said William G. Cruse assumed the duties of the office of Bank Commissioner of the State of Idaho.

III.

That on the 31st day of August, 1910, and while the said William G. Cruse was Bank Commissioner of the State of Idaho and while the said bond was in full force and effect, the Idaho State Bank of Hailey, Idaho, closed its doors and suspended payment and then was and for some time theretofore had been insolvent and unable to meet the demands of its creditors or to pay its depositors in the ordinary and usual course of business or at all.

That at the time said Idaho State Bank so closed its doors and suspended payment and for some time prior thereto your orator and the defendants hereinbefore named, except the said American Surety Company of New York, were depositors and creditors of said bank to an amount aggregating \$75,000 or more, the exact amount thereof being to your orator unknown.

That on or about the 31st day of August, 1912, the State of Idaho commenced an action in the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County, to and for the use and benefit of certain of said defendants, to-wit: Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vincente Guisasola, Maggie J. Porter, F. R. Gooding, Assignee of Richard Jones and E. H. Baker, Charles Cuneo, Assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli, and Giulio Pallinio, Peter Snider, Assignee of G. Guigliani, Mark Faladora, C. Juliean and Joe

Fereta, F. W. Nitschke, Treasurer of F. O. E. Lodge, Sullivan & Sullivan, Assignee of I. N. Sullivan, J. J. McFadden, Administrator, with will annexed of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, E. Daft, Receiver, Assignee of J. S. Whitton, against the defendant, American Surety Company of New York, to recover from said American Surety Company under the penalty specified in said bond the moneys which the defendants above named were alleged to have had on deposit in said bank at the time it closed its doors or suspended payment, which action resulted in a judgment in favor of the State of Idaho, to and for the use and benefit of the said named defendants (plaintiffs in said action), for a total or aggregate sum of \$22,624.33, such judgment being entered on or about the 19th day of May, 1913.

IV.

That the judgment so obtained in the action commenced to and for the use and benefit of the defendants named in paragraph three thereof was a default judgment obtained without a trial of the case on the merits, the default of said American Surety Company of New York having been entered in said cause by the Clerk of said state court on or about the 16th day of October, 1912, while said defendant, American Surety Company of New York was removing said cause pursuant to the provisions of Section 29 of the Judicial Code of the United States to

the Federal court for the district in which said action was pending, and as your orator is informed and believes, said default was entered contrary to and in violation of the provisions of said Section 29 and other sections of said Judicial Code of the United States, and no defense to said action was therefore made by the defendant, American Surety Company of New York.

V.

That on or about the 30th day of August, 1913, the State of Idaho commenced an action in said District Court of the Fourth Judicial District of the State of Idaho in and for Blaine County against the said American Surety Company of New York, under the penalty specified in said bond (Exhibit "A"), for the use and benefit of certain of the defendants above named, to-wit: L. A. Dithmer, J. M. McPherson, Robert Franklin, J. F. McCoy, E. W. Kleinman, Friedman Company, Ltd., Lucile Friedman, S. J. Benson, Aukema Drug Company, M. J. Daly, Bellevue State Bank, Assignee of Jos. Werry, Harry J. Allen, Mrs. W. J. Lamme, W. J. Lamme, and Annie I. Harris (formerly Annie I. Miller), for the amount which it was alleged the said defendants had on deposit in said Idaho State Bank of Hailey, Idaho, on August 31, 1910, when said bank closed its doors or suspended payment, aggregating approximately \$45,000, with interest thereon from the 1st day of September, at the rate of 7% per annum, which said action is still pending undetermined in said state court.

VI.

That the judgment so recovered in said state court for the said sum of \$22,624.33, with accumulated interest thereon, and the amount claimed in said action now pending and undetermined in said state court, with interest thereon at the rate claimed by said defendant, to-wit, 7% per annum from September 1, 1910, and the amount claimed in the action now pending in this court, wherein your orator is the real and actual plaintiff, to recover the sum of \$9,656.93, with interest thereon, aggregate an amount, to-wit, approximately \$41,000 in excess of the total penalty of the said bond, Exhibit "A," and all of said actions were, or are, being brought or maintained under said Exhibit "A" and the penalty thereof.

VII.

That the defendants named in paragraph three hereof, for whose use and benefit the said default judgment of \$22,624.33 was recovered as aforesaid, have received since said judgment was entered and had received prior to the entry of said judgment, as your orator is informed and believes and so charges the fact to be, certain dividends paid them by the Receiver of the Idaho State Bank of Hailey, Idaho, on account of the deposits which said defendants claimed to have had in said bank at the time it suspended payment, which dividends, as your orator is informed and believes, had not been credited on the claims of said defendants against the defendant, American Surety Company of New York under said

bond, and have not been credited on the judgment so obtained, but the said defendants now threaten and intend to proceed to enforce said judgment for the full amount thereof, without making any allowance or credit for the dividends so received and aggregating upwards of \$4,000 or more, as your orator is informed and believes, and regardless of the claims of this complainant and the other defendants mentioned in paragraph five hereof, and will enforce said judgment for the full amount thereof against said American Surety Company of New York without regard to the rights and equities of your orator and the other defendants herein named, unless restrained from so doing by this honorable court until the respective rights of all of the parties hereto have been determined and the aggregate of all valid claims against said Surety Company, under said Exhibit "A," has been ascertained and determined and an accounting had of the dividends received by the defendants named in paragraph three hereof, which in equity and good conscience should be credited upon said judgment.

VIII.

That the aggregate of the amount claimed by the defendants named in paragraph three hereof and by the defendants named in paragraph five hereof exceeds the total amount of the penalty of said bond by approximately \$29,000.

That your orator was not a party to the action brought for the use and benefit of the defendants

named in paragraph three hereof, wherein such default judgment was recovered against the said American Surety Company of New York for the sum of \$22,624.33, and your orator should not, therefore, in law or equity be bound by said judgment, and if the said defendants be permitted to enforce said judgment for the full amount thereof against the said American Surety Company of New York, the remainder of the penalty specified in said bond will be wholly insufficient to pay the claims of your orator and the defendants named in paragraph five hereof whose claims aggregate more than the full penalty of said bond and any payment made on account of the judgment so obtained as aforesaid is in effect a payment to said defendants by your orator and by the defendants named in paragraph five herein, and if said defendants named in paragraph three hereof are permitted to enforce said judgment for the full amount thereof, under the penalty named in said bond, your orator will be injured and suffer a loss to an amount of approximately \$5,000.

That because of the illegal and unlawful manner in which said judgment was obtained without a trial of the cause on the merits and because of the fact that your orator was not a party defendant thereto and was never permitted to contest any of the claims of the defendants named in said paragraph three and on which said judgment is based, and because of the fact that the dividends received by said defendants have not been credited on said judgment or applied to the reduction of said claims, said judgment should

be held and decreed void and inoperative as against your orator and your orator should not be required to pro-rate his claim with said judgment or to take his pro-rata part of the penalty of said bond with the defendants named in paragraph three hereof, based on said judgment, until the amount actually due and owing to said defendants has been ascertained and determined in a proceeding to which your orator is a party, and until such determination has been had and an account has been taken of the dividends received by said defendants, or any of the parties to this cause, from the Receiver of said Idaho State Bank, the defendant, American Surety Company of New York, should be restrained and enjoined from making any payments whatsoever on account of said judgment, or to any of the defendants herein or parties hereto.

IX.

That the rights of the several depositors in said Idaho State Bank, beneficiaries under the penalty of said bond (Exhibit "A"), as among themselves relate back to the execution of said bond and arise by relation out of the same transaction and as of the same date, and in equity all of the parties hereto who may have rights under said bond stand in the same relation to each other without preference or priority of one claim over another, and each is in equity as well as under the law entitled only to his equitable or pro-rata part of the penalty specified in said bond based upon the aggregate of the valid claims that

may be entitled to share in the proceeds from said penalty.

X.

That your orator fears, and has reason to fear, that the defendants named in paragraph five hereof may also recover judgment prior to the determination of the action now pending undetermined in this court, prosecuted for the use and benefit of your orator against the said American Surety Company of New York, and that such judgment together with the judgment obtained as aforesaid by or for the defendants named in paragraph three hereof will aggregate an amount largely in excess of the full penalty of said bond, and if the said defendant, American Surety Company of New York, should pay said judgments, the full penalty of said bond will be exhausted to your orator's great and irreparable injury and your orator cannot be protected in the premises and have the relief which he is, in law and equity, justly entitled unless the defendants named in paragraph three and in paragraph five hereof be enjoined and restrained from collecting, and the said American Surety Company of New York be enjoined and restrained from paying, the claims made against said Surety Company on account of said bond, until your orator's claim has been fully established and an accounting had, and the amount of all valid claims outstanding and enforceable under said bond ascertained and determined.

XI.

That the defendant, American Surety Company of New York, has an unimpaired capital and surplus of several million dollars and is financially responsible for any and all amounts that may be recovered against it under said bond but your orator is informed and believes that unless said Surety Company be restrained or enjoined or protected against the enforcement of the judgment obtained as aforesaid, it will pay the same in full and your orator will thereby sustain great loss and irreparable injury and the action at law being prosecuted for your orator's use and benefit in this court may become a wholly fruitless proceeding.

XII.

That in the actions at law now pending in this court and in the said state court as well as in the action wherein judgment was recovered as aforesaid, the State of Idaho is named as plaintiff but it is alleged in the complaint in each of said actions that said actions are prosecuted in and for the use and benefit of the parties therein named and that the State of Idaho has no interest whatsoever in said proceedings or in the claims therein mentioned or in the proceeds of any judgments that may be recovered in said actions.

In Consideration Whereof, and for as much as your orator is remediless in the premises according to the strict course of the common law and can only have relief in a court of equity, your orator prays the aid of this honorable court, as follows:

(a) That it be held, adjudged and decreed that the judgment recovered by the defendants named in paragraph three hereof, or for the use and benefit of said defendants, against the said American Surety Company of New York, for the sum of \$22,624.33, be held void, unenforceable and ineffectual as against your orator and that your orator shall not be held or required to pro-rate his claim with said judgment and that said defendants are not entitled to recover more than their pro-rata part of the penalty of said bond based upon the aggregate of all valid claims that may be established under said bond and entitled to share in the proceeds of the penalty thereof and that in determining the aggregate amount of such claims, all dividends received on account of said claims from the Receiver of the Idaho State Bank of Hailey by said defendants shall be credited on said claims or any judgments recovered thereon against the said surety.

(b) That the defendants named in paragraph three of this bill of complaint, and each of them, their agents, attorneys and employes, and all persons acting by, for and under them, or either of them, be forthwith restrained and enjoined by this court from enforcing the judgment recovered as aforesaid against the said defendant, American Surety Company of New York, until the action now pending in this court wherein your orator is plaintiff and the said defendant, American Surety Company of New York is defendant, and the action pending in the said District Court of the Fourth Judicial District

of the State of Idaho, in and for Blaine County, which is prosecuted for the use and benefit of the defendants named in paragraph five of the bill herein against the defendant, American Surety Company of New York, have been finally determined and an accounting had and the amount of the valid claims against said surety on account of said bond ascertained and determined.

(c) That an accounting may be taken in this behalf under the direction of this court of the whole of the indebtedness due and owing from the said defendant, American Surety Company of New York, under said bond, in favor of the several claimants and of the dividends received by the several claimants, beneficiaries under said bond, and the amount payable to each of said claimants out of the penalty specified in said bond ascertained and determined.

(d) That your orator have such other and further relief in the premises as the nature of the case may require and as shall be proper and agreeable to the principles of equity and this court.

And may it please your honors to grant unto your orator a writ or writ of subpoena and other processes directed to the Marshal of said district, commanding him that he summon the defendants above named to be and appear in this court on a certain day therein named and under a certain penalty therein to be limited and stated, and then and there, singly and severally, to make full, true and direct answer to this bill of complaint (but not under oath,

such answer under oath being expressly waived as to each of said defendants), and to show cause, if any they have, why the prayer of this bill of complaint should not be granted, according to the rules and practices of this honorable court, and to stand ready to perform and abide by such order, direction or decree as may be made against them in the premises and as to this honorable court shall seem meet.

And this your orator will ever pray.

WILLIAM LEONARD,

By J. G. Hedrick,

Edwin Snow,

(Duly verified.)

His Solicitors.

EXHIBIT "A."

AMERICAN SURETY COMPANY
OF NEW YORK

CAPITAL AND SURPLUS, \$5,000,000.00.

BANK COMMISSIONER'S BOND.

Know All Men by These Presents: That we, William G. Cruse, of Boise, Ada County, State of Idaho, as principal, and the American Surety Company of New York, a corporation of the State of New York, and doing business in the State of Idaho, as surety, are held and firmly bound unto the State of Idaho in the sum of Fifty Thousand (\$50,000.00) Dollars, lawful money of the United States of America, to be paid to the said State of Idaho, for which payment, well and truly to be made, said principal binds himself, his heirs, executors and administrators, and

said surety binds itself and successors jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of March, A. D. 1909.

The Condition of the above obligation is such that, Whereas, the above bounden principal, William G. Cruse, was on the 6th day of March, 1909, appointed State Bank Commissioner in and for the State of Idaho for a term of four years, from March 6th, 1909, unless sooner removed.

Now Therefore, if the said William G. Cruse shall well, faithfully and impartially discharge the duties of his office and pay over to the person entitled by law to receive it, all money coming into his hands by virtue of his office, and that he will pay any and all damages and costs that may be adjudged against him under the provisions of Chapter 12, Title 2, Political Code and Chapter 13, Title 4, of the Civil Code of Idaho, and shall well and truly perform all the duties of such office required by any law to be enacted subsequently to the execution of this bond, then this obligation to be void, otherwise to remain in full force and effect.

WM. G. CRUSE.

AMERICAN SURETY COMPANY
OF NEW YORK,

By WESLEY KING,

(Seal)

Res. Vice President.

Attest: Bradley Sheppard, Agent, Boise, Idaho.

Attest: Stanley Whitehead, Res. Asst. Secretary.

“O. K. McDougal.”

AMERICAN SURETY COMPANY
OF NEW YORK

CAPITAL AND SURPLUS \$5,000,000.00.

State of Utah,

County of Salt Lake.—ss.

On the 15th day of March, 1909, personally appeared before me, Wesley E. King, Resident Vice President of the American Surety Company of New York, to me known, who being by me duly sworn did depose and say: That he resided in the City of Salt Lake, State of Utah; that he is the Resident Vice President of the American Surety Company of New York, the corporation described in and which executed the above instrument; that he knew the corporate seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Trustees of said corporation, and that he signed his name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law. And the said Wesley E. King further said that he was acquainted with Stanley Whitehead and knew him to be one of the Resident Assistant Secretaries of said corporation, that the signature of said Stanley Whitehead subscribed to the said instrument is in the genuine handwriting of the said Stanley Whitehead and was thereto subscribed by the like order of the said Board of Trustees, and in the presence of him, the said Wesley E. King, Resident Vice President.

WESLEY E. KING.

Subscribed and sworn to before me this 15th day of March, 1909.

(Seal)

ROBERT F. HERRON,
Notary Public.

My commission expires Aug. 20th, 1912.

(Attached thereto is an extract from the record book of the Board of Trustees of the American Surety Company of New York.)

Endorsed: Filed May 6, 1915. A. L. Richardson,
Clerk. By Pearl E. Zanger, Deputy.

IN EQUITY—NO. 529.

(Title of Court and Cause.)

MOTION FOR PRELIMINARY INJUNCTION.

Now Comes the complainant in the above-entitled suit, by its solicitors, Messrs. Richards & Haga and McKeen F. Morrow, and moves this Honorable Court to grant a Writ of Injunction against said defendants, and each of them, their agents, attorneys, clerks and employees, pending this suit and until the further order of the Court, conformable to the prayer of complainant's Bill in this cause, and pending the hearing of said motion for preliminary injunction complainant further moves this Honorable Court to restrain the said defendants, and each of them, conformable to the prayer of said Bill.

This motion is based upon complainant's verified Bill and on the Bill of William Leonard in Equity Cause No. 530 against the said Clara Mills et al.,

defendants, wherein similar relief is sought by the said William Leonard.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for Complainant,
Residence: Boise, Idaho.

Endorsed: Filed May 6, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

IN EQUITY—NO. 529.
(Title of Court and Cause.)
MOTION TO DISMISS.

Come Now the defendants herein, Sullivan & Sullivan, assignees of I. N. Sullivan, by L. L. Sullivan and W. E. Sullivan, their solicitors, and move the Court to dismiss the Bill of Complaint herein for the following reasons, to-wit:

1. That the said Bill of Complaint shows upon its face that this Court has no jurisdiction of the subject matter of the cause of action therein set forth, or of the parties herein.

2. That the Bill of Complaint herein fails to show that the default judgment entered in the action of the State of Idaho, to and for the use and benefit of Clara Mills et al., against the American Surety Company, in the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County, was made and entered against said Company through any excusable accident or mistake but was entered by reason of its own fault and neglect.

3. That a Federal Court will not restrain the collection of a judgment at law rendered by a State Court, which had complete jurisdiction of the parties and subject matter, upon the ground that the judgment was rendered through such accident and mistake, facts and circumstances, as alleged in the Bill of Complaint herein.

4. That the Bill of Complaint herein fails to allege any meritorious defense that said American Surety Company had in the action in said State Court.

5. That the Bill of Complaint herein shows that said American Surety Company, defendant in the said action in said State Court, lost its right to present any meritorious defense it might have had in said action by reason of its own fault and neglect.

6. That it appears from the Bill of Complaint herein that the American Surety Company, defendant in said action in said State Court, had a plain, speedy and adequate remedy at law for the matters complained of herein, and pursued the same by application in the original Court to vacate and set aside the default entered in said action, and therefore, the decision of the State Court upon said application adjudicating said matters against said Company, which remains unreversed, is *res adjudicata*, final and conclusive; that the judgment rendered and entered in said action in said State Court, after said default, which is sought to be avoided herein, and collection thereof restrained, was duly rendered by a Court of

competent jurisdiction, remains unreversed and is therefore final, conclusive and *res adjudicata*, and a bar to the action herein.

7. That a Federal Court will not grant relief in equity against judgments at law rendered in a State Court by enjoining the enforcement thereof, where the proceeding, as in the action herein, is merely tantamount to enjoining the enforcement of a judgment of the State Court for errors or irregularities, or which would amount to a mere revision of errors and irregularities or of the legality and correctness of the judgment of the State Court.

8. For want of equity, in that the complainant herein has not by its Bill of Complaint alleged such a case as entitles it in a Court of Equity to relief, or any thereof, touching the matters in said complaint, or any such matters.

9. That the facts stated in said Bill of Complaint are insufficient to constitute a valid cause of action, or to entitle the complainant to any relief in a Court of Equity.

Dated: May 22nd, 1915.

L. L. SULLIVAN,

W. E. SULLIVAN,

Residence: Boise, Idaho,

Solicitors for Defendants.

SULLIVAN & SULLIVAN,

Assignee of I. N. Sullivan.

Service of copy of the foregoing Motion admitted this 24th day of May, 1915.

RICHARDS & HAGA,

Attorneys for Complainant.

Endorsed: Filed May 24th, 1915. A. L. Richardson, Clerk.

IN EQUITY—NO. 529.

(Title of Court and Cause.)

MOTION TO DISMISS.

Comes Now the defendant herein, George F. Steele, Insurance Commissioner of the State of Idaho, by his solicitor, J. H. Peterson, Attorney General for the State of Idaho, and moves the Court to dismiss the Bill of Complaint herein for the following reasons, to-wit:

I.

That said Bill of Complaint shows upon its face that this Court has no jurisdiction of the subject matter of the cause of action therein set forth, or of the parties herein.

II.

For want of equity, in that the complaint herein has not by its Bill of Complaint alleged such a case as entitles it in a Court of Equity to relief, or any thereof, touching the matters in said complaint, or any such matters.

III.

That the facts stated in said Bill of Complaint are insufficient to constitute a valid cause of action, or

to entitle the complainant to any relief in a Court of Equity.

Dated: May 25th, 1915.

J. H. PETERSON,
Residence: Boise, Idaho,
Attorney General for the State of Idaho,
and Solicitor for Said Defendant.

Service of copy of the above motion admitted this
25th day of May, 1915.

RICHARDS & HAGA,
Attorneys for Complainant.

Endorsed: Filed May 25th, 1915. A. L. Richardson, Clerk.

IN EQUITY—NO. 529.
(Title of Court and Cause.)
MOTION TO DISMISS.

Come Now the defendants herein, Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vincente Guisasola, Maggie J.

Porter, F. R. Gooding, assignee of Richard Jones and E. H. Baker, Charles Cuneo, assignee of Fidela Rst-einsia, Leo Bott, Thomas Johnson, Louis D. Paoli and Giulio Pallinio, Peter Snider, assignee of G. Guigliani, Mark Faladora, C. Juliean and Joe Fereta, E. W. Nitschke, Treasurer of F. O. E. Lodge, J. J. McFadden, Administrator, with Will annexed, of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, E. Daft, receiver of Idaho State Bank, assignee of J. S. Whitton, by L. L. Sullivan and W. E. Sullivan, their solicitors, and move the Court to dismiss the Bill of Complaint herein for the following reasons, to-wit:

1. That said Bill of Complaint shows upon its face that this Court has no jurisdiction of the subject matter of the cause of action therein set forth, or of the parties herein.

2. That the Bill of Complaint herein fails to show that the default judgment entered in the action of the State of Idaho, to and for the use and benefit of Clara Mills, et al., against the American Surety Company, in the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County, was made and entered against said company through any excusable accident or mistake but was entered by reason of its own fault and neglect.

3. That a Federal Court will not restrain the collection of a judgment at law rendered by a State Court, which had complete jurisdiction of the parties

and subject matter, upon the ground that the judgment was rendered through such accident and mistake, facts and circumstances, as alleged in the Bill of Complaint herein.

4. That the Bill of Complaint herein fails to allege any meritorious defense that said American Surety Company had in the action in said State Court.

5. That the Bill of Complaint herein shows that said American Surety Company, defendant in the said action in said State Court, lost its right to present any meritorious defense it might have had in said action by reason of its own fault and neglect.

6. That it appears from the Bill of Complaint herein that the American Surety Company, defendant in said action in said State Court, had a plain, speedy and adequate remedy at law for the matters complained of herein, and pursued the same by application in the original Court to vacate and set aside the default entered in said action, and therefore, the decision of the State Court upon said application adjudicating said matters against said Company, which remains unreversed, is *res adjudicata*, final and conclusive; that the judgment rendered and entered in said action in said State Court, after said default, which is sought to be avoided herein, and collection thereof restrained, was duly rendered by a Court of competent jurisdiction, remains unreversed and is therefore final, conclusive and *res adjudicata*, and a bar to the action herein.

7. That a Federal Court will not grant relief in equity against judgments at law rendered in a State Court by enjoining the enforcement thereof, where the proceeding, as in the action herein, is merely tantamount to enjoining the enforcement of the judgment of the State Court for errors or irregularities, or which would amount to a mere revision of errors and irregularities or of the legality and correctness of the judgment of the State Court.

8. For want of equity, in that the complainant herein has not by its Bill of Complaint alleged such a case as entitles it in a Court of Equity to relief, or any thereof, touching the matters in said complaint, or any such matters.

9. That the facts stated in said Bill of Complaint are insufficient to constitute a valid cause of action, or to entitle the complainant to any relief in a Court of Equity.

Dated: October 11th, 1915.

L. L. SULLIVAN,

W. E. SULLIVAN,

Residence: Boise, Idaho.

Solicitors for said Defendants.

Service of a copy of the foregoing Motion admitted this 11th day of October, 1915.

RICHARDS & HAGA,

Solicitors for Plaintiff.

Endorsed: Filed October 11th, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

IN EQUITY—NO. 529.

(Title of Court and Cause.)

DECISION ON MOTION TO DISMISS AND AP-
PLICATION FOR TEMPORARY
INJUNCTION.

September 2, 1915.

Richards & Haga, Attorneys for Plaintiff.

Sullivan & Sullivan, Attorneys for certain De-
fendants.*Dietrich, District Judge:*

By reference to the two remand decisions, one filed December 2, 1912, in No. 424 (State of Idaho, for Clara Mills and others vs. American Surety Company), and the other, in No. 459 (State of Idaho, for William Leonard and others vs. American Surety Company), on October 2, 1914, it will be seen that the action taken in each case was predicated largely, if not entirely, upon the fact that the claims of the real plaintiffs were pleaded as distinct, independent causes of action at law. The latter decision closes with this sentence: "It is hardly necessary to add that if the plaintiff had, in a single cause of action, set forth the facts substantially as they appear in the sixteen different causes of action, and had prayed only for a decree adjudging that, by reason of such facts, the defendant was indebted to the plaintiff, for the use and benefit of the several claimants, in the sum of \$50,000.00, and further that the decree apportion the amount of the recovery to the several claimants as their rights and interests should ulti-

mately appear, the questions discussed would present a different phase.”

Starting with the assumption that the conclusions reached in those cases were correct, we may inquire whether the present controversy presents a different jurisdictional aspect. At the close of the oral argument I intimated the view, which I still entertain, that the plaintiff cannot in this proceeding attack the validity of the judgment obtained in the state court by Mills and her associates. No actionable fraud is pleaded, and if it were assumed that the state courts committed error in entering judgment by default before the motion to remand had been disposed of in this court, such error cannot be corrected in a suit of this character. There must be an end of litigation, and the only remedy available to the plaintiff is such as is afforded by appellate proceedings. I therefore put this branch of the bill of complaint on one side as in no wise tending to support our jurisdiction.

As to the other relief sought, the case is clearly of equitable cognizance, and presents the requisite diversity of citizenship. Moreover, insofar as concerns the defendant Steele and the defendant Leonard, the required jurisdictional amount is undoubtedly involved. The real question is, what is to be deemed to be the matter in dispute as between the plaintiff and the other defendants.

The maximum of the plaintiff's just liability, if any it has in the premises, is conceded to be \$50,-

000.00, and yet it is apparent that from proceedings which have been taken and are threatened it is in danger of being held for a greater aggregate sum. Mills and associates contend that they may enforce payment of the full amount of their judgment claims. Leonard and Dithmer and others are asserting the right to receive at least their full proportionate share of the security represented by the plaintiff's bond. The claims thus waged, added together, exceed the amount of the bond by at least \$10,000.00. If the pending actions are permitted to proceed independently and in different courts, it is possible that by reason of a diversity of judicial construction, or possibly as a result of inconsistent views of the facts, the plaintiff may ultimately be compelled to pay all of the claims, though they aggregate an amount greatly in excess of its legal liability. Against this possibility it seeks to be protected by compelling all claimants to come into the same tribunal, and, in a single action, have a comprehensive decree defining and concluding all claims. True, plaintiff goes further and denies liability in toto, but that phase of its contention may be ignored. Were that the only issue, and were the penalty of the bond in excess of the aggregate of all claims, it might very well be held that the case is one of neither equitable nor federal cognizance. Upon such an hypothesis there would be no relation of interdependence, no community of interest, between the several claimants. Each could maintain his own action in his own way, to recover the full amount of his claim, and his recovery would

in no wise infringe upon or jeopardize the rights of any other claimant. Such were the conditions under which the motions to remand were granted. But now a different case is made. Assuming the plaintiff's liability to be the full penalty of the bond, there is a single fund insufficient in amount to satisfy all claims of the same class and of like dignity. A joint interest is shown. The claims are interdependent. To pay one in full is to deny another. The contention that the claims which have gone to judgment in the Mills suit have a preference over the others does not materially alter the case. If sustained, it would imply only a different distribution of the fund. The fund is inadequate in either view to satisfy all claims. If liable at all upon the bond, the plaintiff perhaps has little, if any, interest in the general question of how the fund shall be distributed, but it is deeply interested in having a single principle of distribution prevail at all times and in all tribunals, for, as already suggested, if one court adopts one view and another court another, it may ultimately be compelled to pay in excess of the stipulated penalty. Under the circumstances it is thought that the whole fund may properly be regarded as the matter in dispute. I say the entire fund, for the whole of it is in controversy, and it seems to afford the simplest and most obvious measure of the value of the matter in dispute. It bears some analogy to the property which is the subject of a creditors' suit, and which is insufficient to pay all claims.

If the penalty of the bond is not taken as the measure of the matter in dispute, I am inclined to think that, in view of the facts now shown, all the claims may be aggregated; at least they may be divided into three groups, and each group treated as a unit, namely, the group held by Mills and her associates, the group held by Dithmer and associates, and the claim of Leonard. In either view the amount would be sufficient to confer jurisdiction.

It is earnestly insisted that the status of the claims embraced in the Mills suit remains unaltered, and if the motion to remand was properly granted the motion to dismiss should now be sustained. But not so. The claimants in that case joined as plaintiffs, so it appeared, merely for convenience. There was no joint relation between them, no community of interest. Upon the trial of the cause one might succeed and the others fail. No one in the group had any interest in assisting or opposing any other one. The success in whole or in part of any one in no wise affected the interest of any other. But now by the judgment a joint relation has been created; a measure of interdependence, of community of interest, exists. The claimants now wage common cause for preference against all other claimants. Any money which may be collected on the judgment is not for one, but for all. It must be distributed *pro rata*. As between members of this group at least there can be no assertion of superior rights. The execution against which the plaintiff here seeks protection is not for the benefit of one, but for the joint benefit of

all. In levying they act jointly. Their rights have a common origin, are of the same dignity, and now rest in a single record. They act together through a single agent, to the same end, an end in which they have a joint or common interest. Their interests may therefore properly be aggregated for the purposes of jurisdiction.

Perhaps no decided case can be found in which the facts are closely analogous, but the conclusion I have reached finds substantial support in the following decisions: *Hood v. Board*, 210 Fed. 384; *McDaniel v. Traylor*, 196 U. S. 428; *Marshal v. Holmes*, 141 U. S. 569; *Bank of Troy v. Whitehead*, 222 U. S. 39; *Handley v. Stutz*, 137 U. S. 366.

INJUNCTIVE RELIEF.

Passing now to the plaintiff's application for temporary injunctive relief, it follows from what has already been said that such relief should go no further than to afford protection to the plaintiff against the necessity of paying in excess of the penalty of the bond. Had all claimants been made parties to the Mills suit, the judgment there would have been conclusive, and there would be no ground for granting an injunction; and we cannot now properly go further than to restrain the judgment creditors from so using the judgment as to work an injustice either upon the plaintiff or other claimants, by enforcing the payment of the full amount of the judgment claims before the other claimants have had their day in court. The injunction will therefore not wholly

restrain execution upon the judgment, but will only prohibit the judgment creditors from collecting more than a proportionate interest in the penalty of the bond.

I should add that defendants are in error in assuming that the injunction in any wise interferes with or infringes upon the jurisdiction of the state court. Had the state court exercised jurisdiction over the fund represented by the penalty of the bond, an entirely different question would be presented, but that is just what was not done in the Mills suit. Apparently the plaintiffs there studiously avoided invoking such jurisdiction. As already suggested, they might have instituted a suit in equity, by which the state court could have laid hands upon the entire fund and distributed it to all who were entitled to share therein, as their interests might appear, but instead of pursuing that course they brought an action at law, excluding therefrom others who were apparently equally entitled with them to share in the fund. While the judgment so obtained might, in the absence of claims on the part of persons who were not parties to the suit, be conclusive upon the plaintiff, surely it cannot be held to conclude the rights of creditors who were not made parties to the suit. Even if the view be taken that the judgment is conclusive of the question of the several amounts in which the judgment claimants were damaged by reason of the violation of the Bank Commissioner of the conditions of the bond, a point I do not decide, still

the other claimants would have the right to be heard upon all matters touching the distribution of the fund in which they have an interest. And if, upon a full hearing, in a proceeding to which all claimants are parties, it turns out to be necessary, in order to avoid injustice, to limit the apparent judgment rights of Mills and her associates, that is a consequence for which they themselves are to blame, in that they did not bring into the suit in which they obtained their judgment all parties in interest. Now for the first time a court is asked to assume jurisdiction of the entire fund and make complete distribution thereof, and now for the first time all claims upon this fund are brought into a single proceeding for adjudication. Not only has the state court never had jurisdiction of the fund, but it has never had jurisdiction of or adjudicated any issue as between the several claimants.

An injunctive order will issue against the plaintiffs in the Mills suit, restraining them from collecting more of the \$50,000.00 penalty than would be their proportionate share thereof, assuming that all claims are correctly scheduled in the bill of complaint and are valid. Counsel for the plaintiff may make the necessary computations, and submit the form of order to opposing counsel. The injunction bond will be fixed at \$5,000.00.

The motion to dismiss will be denied.

Endorsed: Filed Sept. 2, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

IN EQUITY—NO. 529.

(Title of Court and Cause.)

ORDER.

This cause came on to be heard upon an order to show cause, issued on the 6th day of May, 1915, why a preliminary injunction should not issue herein, as prayed for in the Bill, Richards & Haga appearing as counsel for plaintiff, and J. H. Peterson, Attorney General for the State of Idaho, appearing as counsel for George F. Steele, Insurance Commissioner of the State of Idaho, and L. L. Sullivan and W. E. Sullivan appearing as counsel for Sullivan & Sullivan; and it appearing that a good and sufficient bond in the penal sum of \$5,000.00, heretofore fixed by the Court, has been filed;

It Is Ordered, that the said defendants, Sullivan & Sullivan, Assignee of I. N. Sullivan, and their agents, attorneys and assigns, and all persons acting for them, or either of them, are hereby restrained and enjoined from enforcing that certain judgment mentioned in the Bill, or taking any action whatsoever for the collection of more of the penalty of that certain bond, given by William G. Cruse, as principal, and the said plaintiff, American Surety Company, as surety, to the State of Idaho, dated the 15th day of March, A. D. 1909, a copy of which is attached to the Bill, than would be their proportionate share of Thirteen Thousand Six Hundred and Fourteen Dollars (\$13,614.00).

And the defendant, George F. Steele, Insurance

Commissioner of the State of Idaho, and his deputies and assistants, successor or successors in office, and all persons acting for him or in his place or stead, be, and they are hereby, restrained and enjoined from cancelling, revoking, annulling, or in any wise impairing the certificate, right or authority of the complainant, American Surety Company of New York, from doing business in the State of Idaho as a Surety Company, or otherwise, because of its failure to pay the judgment recovered by the State of Idaho, for the use and benefit of said Clara Mills and others, above named, or any part thereof, until the further order of the Court in the premises.

Dated this 9th day of October, 1915.

FRANK S. DIETRICH,

Judge.

Endorsed: Filed Oct. 9, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy.

IN EQUITY—NO. 529.

(Title of Court and Cause.)

ORDER.

This cause came on to be heard upon an order to show cause, issued on the 6th day of May, 1915, why a preliminary injunction should not issue herein, as prayed for in the Bill, Richards & Haga appearing as counsel for plaintiff, and L. L. Sullivan and W. E. Sullivan appearing as counsel for the defendants hereinafter named; and it appearing that a good and

sufficient bond in the penal sum of \$5,000.00, heretofore fixed by the Court, has been filed;

It Is Ordered, that the said defendants, Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vincente Guisasola, Maggie J. Porter, F. R. Gooding, Assignee of Richard Jones and E. H. Baker, Charles Cuneo, Assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli and Giulio Pallinio, Peter Snider, Assignee of G. Guigliani, Mark Faladora, C. Juliean and Joe Fereta, F. W. Nitschke, Treasurer of F. O. E. Lodge, J. J. McFadden, Administrator, with will annexed, of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, and E. Daft, Receiver Idaho State Bank, assignee of J. S. Whitton, and their agents, attorneys and assigns, and all persons acting for them, or either of them, are hereby restrained and enjoined from enforcing that certain judgment mentioned in the Bill, or taking any action whatsoever for the collection of more of the penalty of that

certain bond, given by William G. Cruse, as principal, and the said plaintiff, American Surety Company, as surety, to the State of Idaho, dated the 15th day of March, A. D. 1909, a copy of which is attached to the Bill, than would be their proportionate share of Thirteen Thousand Six Hundred and Fourteen Dollars (\$13,614.00).

Dated this 14th day of October, 1915.

FRANK S. DIETRICH,

Judge.

Endorsed: Filed October 14, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy Clerk.

(Title of Court and Cause.)

BOND ON PRELIMINARY INJUNCTION.

Know All Men by These Presents, That we, American Surety Company of New York, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the defendants named in the above-entitled cause, in the just and full sum of Five Thousand Dollars (\$5,000.00) for the payment of which, well and truly to be made, we do hereby, jointly and severally, bind ourselves and each of our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 8th day of October, in the year of our Lord one thousand nine hundred and fifteen.

The condition of this obligation is such, that:

Whereas, the said American Surety Company of

New York has commenced a certain suit against the above-named defendants in the United States District Court for the District of Idaho, Southern Division, and therein prayed for a preliminary injunction against the defendants pending the trial of said suit; and,

Whereas, the said court has issued its said preliminary injunction in said cause, upon condition that the said complainant shall cause to be executed a good and sufficient bond to the said defendants for the sum of Five Thousand Dollars (\$5,000.00) to secure them against all costs and damages which may be awarded to them in case said order shall be finally determined to have been improperly granted.

Now, Therefore, if the said American Surety Company of New York shall make its said plea good, or shall well and truly pay the said defendants all costs and damages which may be awarded to them in case said court shall finally determine that said order was improperly granted, then this obligation shall be void; otherwise, to remain in full force and effect.

AMERICAN SURETY COMPANY
OF NEW YORK,

(Corporate Seal) By Bradley Sheppard,
Resident Vice President.

Attest: McKen F. Morrow, Resident Assistant
Secretary.

FIDELITY AND DEPOSIT COM-
PANY OF MARYLAND,

(Corporate Seal) By Sidney C. Fuld,
Its Attorney in Fact.

Attest: Walter S. Bruce, General Agent.

Approved Oct. 9th, 1915. Frank S. Dietrich,
Judge.

Endorsed: Filed Oct. 9, 1915. A. L. Richardson,
Clerk. By Pearl E. Zanger, Deputy.

IN EQUITY—NO. 529.

(Title of Court and Cause.)

ORDER DENYING MOTION TO DISMISS.

This cause came on to be heard upon the motion to dismiss, filed by defendants Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vincente Guisasola, Maggie J. Porter, F. R. Gooding, assignee of Richard Jones and E. H. Baker, Charles Cuneo, assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli and Giulio Pallinio, Peter Snider, assignee of C. Guigliani, Mark Faladora, C. Julian and Joe Fereta, F. W. Nitschke, Treasurer of F. O. E. Lodge, J. J. McFadden, administrator, with will annexed, of the estate of Frank E. Foote,

deceased, McFadden & Brodhead, trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, and E. Daft, Receiver of Idaho State Bank, assignee of J. S. Whitton, on the 11th day of October, 1915; and it appearing that the same questions are raised by said motion as are raised by the motion of the defendants L. L. Sullivan and W. E. Sullivan, which motion was denied by this Court in a decision rendered September 2nd, 1915;

Now, Therefore, It Is Ordered, that the said motion of the above named defendants to dismiss the complaint herein be denied.

Dated this 14th day of October, 1915.

FRANK S. DIETRICH,

Judge.

Endorsed: Filed Oct. 14, 1915. A. L. Richardson, Clerk. By Pearl E. Zanger, Deputy Clerk.

IN EQUITY—NO. 529.

(Title of Court and Cause.)

ASSIGNMENT OF ERRORS.

And Now Comes the complainant, American Surety Company of New York, a corporation, by its solicitors, and, having presented an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from the interlocutory order and decree made and entered in the above entitled cause on the 9th day of October, 1915, partially refusing an injunction preliminary to final hearing herein against

the defendants Sullivan & Sullivan, and from the interlocutory order and decree made and entered in said cause on the 14th day of October, 1915, partially refusing an injunction preliminary to final hearing herein against certain of the above named defendants, and from the decision made and filed by the Court in this cause on the 2nd day of September, 1915, says that said orders and decrees of October 9th and October 14th, 1915, and said decision of September 2, 1915, are erroneous and unjust to complainant, and particularly in this:

1. Because the Court erred in holding and deciding that the full relief prayed for in the Bill of Complaint should not be granted.

2. Because the Court erred in holding and deciding that the defendants Sullivan & Sullivan, assignees of I. N. Sullivan, should not be enjoined, preliminary to final hearing herein, from collecting or enforcing the collection, or taking any steps whatsoever for collecting on the penalty of that certain bond, described in the complaint herein, their proportionate share of \$13,614.00.

3. Because the Court erred in holding and deciding that the defendants named in said interlocutory order and decree made and entered October 14, 1915, should not be enjoined and restrained, preliminary to final hearing herein, from collecting or enforcing the collection, or taking any steps whatsoever for collecting on the penalty of that certain bond, described in the complaint herein, their proportionate share of \$13,614.00.

4. Because the Court erred in holding and deciding that the said defendants, and each of them, could collect their proportionate share of \$13,614.00 on the judgment obtained by them from the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County, prior to final hearing herein and the taking of an account.

5. Because the Court erred in holding and deciding that each of said defendants could collect their proportionate share of the sum of \$13,614.00 on said judgment without accounting for the dividends collected and received by them, as set forth in the Bill of Complaint herein.

6. Because the Court erred in holding and deciding that the said defendants, and each of them, should not be enjoined and restrained, preliminary to final hearing, from collecting on said judgment and the penalty of said bond their proportionate share of \$13,614.00 without accounting for dividends collected and received by them, as set forth in the Bill of Complaint herein.

7. Because the Court erred in refusing a preliminary injunction restraining the collection of the sum of \$13,614.00 on the above mentioned judgment and penalty, pending an accounting and final hearing herein.

8. Because the Court erred in refusing an injunction restraining the collection of the above-mentioned judgment, and the whole thereof, under the allegations in the Bill that such judgment was taken by default after plaintiff had appeared by serving the

written notice of the petition and bond for removal required by Section 29 of the Federal Judicial Code and pending the determination of the right of removal by the Federal Court.

9. Because the Court erred in not holding that the default taken in the State Court was premature, and that the State Court had no jurisdiction pending a determination of the right of removal by the Federal Court under the provisions of Section 29 of the Federal Judicial Code.

10. Because the Court erred in holding that the State Court had jurisdiction to proceed in the cause, pending the determination of the right of removal by the Federal Court under the provisions of Section 29 of the Federal Judicial Code.

Complainant, however, expressly reserves to itself all benefit and advantage of so much of said order and decree of October 9, 1915, as restrains and enjoins the said defendants Sullivan & Sullivan from collecting more than their proportionate share of the said sum of \$13,614.00 on said judgment and the penalty of said bond and restrains the defendant George F. Steele, Insurance Commissioner of the State of Idaho, and his deputies and assistants, successor or successors in office, and all persons acting for him, from cancelling, revoking, annulling, or in any wise impairing the certificate, right, or authority of the complainant to do business in the State of Idaho as a Surety Company, or otherwise, because of its failure to pay the said judgment, and of the said order and decree of October 14, 1915, insofar as

it enjoins the defendants therein named from collecting or enforcing the said judgment and penalty for more than their proportionate share of the sum of \$13,614.00.

Wherefore, complainant prays that the said orders and decrees be reversed, insofar as they deny the said injunction preliminary to final hearing, as prayed for in the said complaint, and that the District Court be directed to grant said injunction as prayed for in said complaint, preliminary to final hearing.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for Complainant,
Residence: Boise, Idaho.

Service of the foregoing Assignment of Errors and receipt of copy thereof, admitted this 28th day of October, 1915.

SULLIVAN & SULLIVAN,
Solicitors for Defendants Clara Mills and Others.

EDWIN SNOW,
J. G. HEDRICK,
Solicitors for William Leonard, L. A. Dithmer and
Others.

J. H. PETERSON,
Attorney General,
By HERBERT WING,
Assistant,
Solicitors for Defendant George F. Steele, Insurance Commissioner.

Endorsed: Filed Oct. 28th, 1915. W. D. McReynolds, Clerk.

IN EQUITY—NO. 529.

(Title of Court and Cause.)

PETITION FOR APPEAL.

The above-named complainant, conceiving itself aggrieved by those two certain interlocutory orders and decrees made and entered in the above entitled cause on the 9th and 14th days of October, 1915, respectively, pursuant to the decision rendered in said cause on the 2nd day of September, 1915, which orders enjoined and restrained each of the defendants named therein from taking any action whatsoever to collect more of the penalty of that certain bond, given by William G. Cruse, as principal, and the said complainant, as surety, to the State of Idaho, dated the 15th day of March, 1909, than their proportionate share of \$13,614.00, and from enforcing the collection of that certain judgment, recovered in the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County, on or about May 19, 1913, for more than \$13,614.00, and refused to enjoin or restrain said defendants, preliminary to final hearing herein, from collecting the said sum of \$13,614.00 and enforcing the said judgment for that amount, and which order of October 14, 1915, dissolved that certain other order entered herein on the 9th day of October, 1915, restraining the defendants Clara Mills, and others, from enforcing said judgment until the further order of the Court, does hereby appeal from said orders and decrees, made and entered on the 9th and 14th days of October, 1915, respectively, and each of them, to the United States Cir-

cuit Court of Appeals for the Ninth Circuit, except from so much of said orders, or either of them, as restrains the defendants therein named, other than George F. Steele, Insurance Commissioner of the State of Idaho, from enforcing the said judgment or taking any action whatsoever for the collection of more of the penalty of that certain bond, above described, than their proportionate share of the sum of \$13,614.00, and as restrains the said defendant George F. Steele, Insurance Commissioner, his deputies, assistants, successor or successors in office, and all persons acting for him, from cancelling, revoking, annulling or in any wise impairing the certificate, right, or authority of complainant to do business in the State of Idaho as a Surety Company because of the failure of the said complainant to pay said judgment.

And complainant prays that this appeal may be allowed and that citation issue, as provided by law, and that a transcript of the records, proceedings, and papers on which said orders and decrees were based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

And this complainant desiring to stay the enforcement of the said judgment, above described, for the collection of the sum of \$13,614.00 pending the decision of this appeal, and to preserve the subject matter of this litigation, pending such appeal, tenders bond in such amount as the Court may require for such purpose, and prays that with the allowance of this appeal the said defendants named in said orders

of October 9th and 14th, 1915, and each of them, and any and all persons acting for or in their behalf, may be restrained and enjoined from enforcing any portion of said judgment whatsoever or collecting any portion of the penalty of said bond, or proceeding further with the sale of those certain funding bonds of the District of Columbia of the par value of \$25,000.00 deposited by your petitioner with the State Treasurer of the State of Idaho, under that certain Writ of Execution issued out of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, on the 14th day of October, 1915, to the Sheriff of the County of Ada, State of Idaho, pending the determination of this appeal.

The application for such injunction is based on the records and files in this action and on the affidavit of J. H. Richards, with exhibits thereto attached, filed herewith, hereby referred to and made a part hereof.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for Complainant,
Residence: Boise, Idaho.

ORDER ALLOWING APPEAL AND RESTRAIN-
ING DEFENDANTS PENDING APPEAL.

And now, to-wit: On the 30th day of October, 1915, *It Is Ordered*, that the foregoing petition for appeal be granted and that said appeal be allowed as prayed for, and that complainant American

Surety Company of New York file a bond on appeal in the sum of Five Hundred Dollars (\$500.00) with good and sufficient security to be approved by the Court.

And the matter of restraining and enjoining the defendants hereinafter named, as prayed for in the said petition, having come on regularly to be heard at Chambers on the 29th day of October, 1915, on the record and files in this action, including the Assignment of Errors and the Petition for Appeal herein, and the affidavit of J. H. Richards and the counter-affidavit of W. E. Sullivan, Messrs. Richards & Haga and McKeen F. Morrow appearing for the said complainant and petitioner and Messrs. Sullivan & Sullivan appearing for the said defendants hereinafter named, and the Court being fully advised in the premises;

Now, Therefore, It Is Hereby Ordered, that you, the said defendants Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vincente Guisasola, Maggie J. Porter, F. R. Gooding, assignee

of Richard Jones and E. H. Baker, Charles Cuneo, assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli and Giulio Pallinio, Peter Snider, assignee of G. Guigliani, Mark Faladora, C. Juliean and Joe Fereta, F. W. Nitschke, Treasurer of F. O. E. Lodge, Sullivan & Sullivan, assignee of I. N. Sullivan, J. J. McFadden, Administrator, with will annexed, of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, and E. Daft, Receiver of Idaho State Bank, assignee of J. S. Whitton, your agents, servants and attorneys, and all persons acting by or under your authority or direction, be, and you are hereby restrained and enjoined from collecting, enforcing the collection, or taking any action whatsoever for the collection, of that certain judgment recovered for your use and benefit in the District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County, on or about the 19th day of May, 1913, or proceeding further with the sale of those certain bonds of the District of Columbia of the par value of \$25,000.00 deposited by complainant, American Surety Company of New York, with the State Treasurer of the State of Idaho, under that certain Writ of Execution issued out of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, on the 14th day of October, 1915, to the Sheriff of the County of Ada, State of Idaho, pending the determination of this appeal, upon the petitioner filing a bond to the above-named defendants in a form to be

approved by the Court, in the sum of Fifteen Thousand Dollars (\$15,000.00), with good and sufficient sureties, conditioned that the above-named complainant and petitioner will prosecute its said appeal to effect and answer all damages and costs, if it shall fail to sustain its appeal, and in that event will pay the further sum of fifty dollars (\$50.00) as an attorney's fee, and will pay to the said defendants when the decision of the Circuit Court of Appeals herein shall have become final the sum of \$13,614.00, with interest thereon at the rate of twelve per cent (12%) per annum from the 9th day of December, 1915, in the event that the said interlocutory orders and decrees appealed from herein are affirmed in their entirety; and in the event that said Circuit Court of Appeals holds that the lower court erred in not deducting the amount of the dividends received, to-wit, \$3,420.75 from the said \$13,614.00, then said complainant will pay to said Mills, et al., the sum of \$10,193.25, less dividends if any hereafter received by said defendants, with interest at the rate of twelve per cent. (12%) from December 9th, 1915. But that in the event that said orders and decrees are reversed in their entirety, or in the event that, prior to the time that the decision of the said Circuit Court of Appeals herein becomes final, the Supreme Court of the United States in the cause now pending there on Writ of Error, in which complainant herein is plaintiff in error and the State of Idaho, to and for the use and benefit of Clara Mills, et al., is defendant in error, shall have held said judgment, the enforcement

of which is sought to be enjoined in this action, invalid, said bond shall be null and void.

Dated October 30th, 1915.

(Signed) FRANK S. DIETRICH,

District Judge.

Endorsed: Filed October 30, 1915. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

AFFIDAVIT IN SUPPORT OF PETITION FOR
INJUNCTION PENDING APPEAL.

United States of America,
State of Idaho,
County of Ada,—ss.

J. H. Richards, being first duly sworn, deposes and says: That he is one of the attorneys for the above-named complainant, American Surety Company of New York, in the above-entitled cause, and in that certain action in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, in which the State of Idaho, to and for the use and benefit of Clara Mills and others, recovered judgment against the said American Surety Company of New York for the sum of \$22,624.33, and interest and costs, the enforcement of which said judgment the above-named complainant sought to have enjoined herein;

That on the 9th and 14th days of October, 1915, respectively, this Court made and entered two certain interlocutory orders or decrees enjoining the

said Clara Mills and others from collecting more on the said judgment than their proportionate share of \$13,614.00, and refusing to enjoin the said defendants from collecting or enforcing the collection of their proportionate share of \$13,614.00 on the said judgment; and the said complainant, American Surety Company of New York, is perfecting an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the said interlocutory orders or decrees of October 9th and October 14th, 1915, insofar as they deny and refuse the temporary injunction as prayed for in the bill of complaint herein, restraining the said defendants named in such orders from collecting or enforcing the collection of their proportionate share of \$13,614.00 on said judgment; and such appeal is taken in good faith and for the purpose of determining the right of the said defendants to enforce the collection of any part of said judgment pending the final determination of this action, and the right of said defendants to enforce the collection of said judgment for the sum of \$13,614.00, without accounting for the dividends to the amount of several thousand dollars received by them since the entry of said judgment from the Receiver of the Idaho State Bank at Hailey, Idaho, on the identical claims on which said judgment was recovered against the said American Surety Company of New York, complainant herein;

That on the 14th day of October, 1915, the said defendants Clara Mills and others, through their attorneys Messrs. Sullivan & Sullivan, who are also

defendants herein, caused a Writ of Execution to issue from the said District Court of the Fourth Judicial District of the State of Idaho, in and for Blaine County, to the Sheriff of the County of Ada, State of Idaho, directing said Sheriff to satisfy said judgment in the amount of \$13,614.00 out of any money, bonds, or other securities deposited by the said American Surety Company of New York with the State Treasurer of the State of Idaho, in trust, to answer defaults of said Company as surety in conformity with the provisions of the statutes of Idaho, and particularly Session Laws, 1911, Chapter 228, Section 89, page 771, all of which more fully appears from said Writ of Execution, a copy of which is attached hereto, marked Exhibit "A," made a part hereof, and hereby referred to;

That on the 15th day of October, 1915, the said Sheriff of Ada County, one Emmitt Pfof, gave notice to the said American Surety Company of New York, complainant herein, to Richards & Haga, its attorneys, to Sheppard & Falk, agents of said Company in Boise, to John W. Eagleson, State Treasurer of the State of Idaho, and to George F. Steele, Insurance Commissioner of the State of Idaho, that he would on the 9th day of December, 1915, at 10 o'clock A. M., in front of the Court House at Boise, Idaho, sell at public auction to the highest bidder, for cash, to satisfy said execution and a proportionate part of the said judgment, all the right, title, and interest of the said American Surety Company of New York, complainant herein, in five certain funding bonds of

the District of Columbia, therein specified, of the par value of \$25,000.00, a copy of which said notice is attached hereto, marked Exhibit "B," made a part hereof, and hereby referred to; that a copy of said notice with a copy of said Writ of Execution thereto attached was served upon this affiant, as one of the attorneys for said American Surety Company of New York, and upon Messrs. Sheppard & Falk, as agents of said Company, upon the 16th day of October, 1915; and affiant is informed and believes that copies of said papers were also served on the said George F. Steele, Insurance Commissioner of the State of Idaho, and upon John W. Eagleson, State Treasurer of the State of Idaho, on the same day;

That the value of said bonds is greatly in excess of \$13,614.00, and unless said sale is enjoined and restrained the said Clara Mills and others, defendants herein, holders of said judgment, will proceed to the sale of said bonds, and by said sale will enforce the collection of the full sum of \$13,614.00 before the appeal taken herein by complainant can be determined, without accounting for dividends to the amount of several thousand dollars received by them from the Receiver of the Idaho State Bank at Hailey, since the entry of said judgment on account of the identical claims on which they recovered said judgment, all to the great and irreparable injury of complainant herein, and said complainant will be effectually deprived of its right to appeal from said interlocutory orders and decrees by the destruction of the subject matter of the litigation, and by the carrying

out of the acts sought to be enjoined by the bill of complaint herein, and will be left wholly without remedy in the premises.

Further this affiant saith not.

J. H. RICHARDS.

Subscribed and sworn to before me this 28th day of October, 1915.

(Notary Seal(

EDNA L. HICE,
Notary Public for Idaho,
Residing at Boise, Idaho.

Endorsed: Filed October 28, 1915. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

AFFIDAVIT IN OPPOSITION TO GRANTING
INJUNCTION PENDING APPEAL.

State of Idaho,
County of Ada,—ss.

W. E. Sullivan, being first duly sworn, deposes and says: That he is one of the attorneys for certain of the above named defendants generally referred to in the proceedings herein as Mills, et al., and in that certain action in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, wherein the State of Idaho, to and for the use and benefit of Clara Mills et al., was plaintiff, and the American Surety Company of New York, was defendant;

That in answering the statements in the affidavit in support of the petition for injunction pending the appeal herein that dividends to the amount of several

thousand dollars had been received by said Mills et al., since the entry of said judgment and had not been accounted for, this affiant states: That the Receiver of the Idaho State Bank paid the following dividends to all of the depositors of said Bank, including Mills et al., Dithmer et al., and William Leonard, to-wit:

On May 25, 1913.....	10%
On December 19, 1913.....	5%
On September 24, 1914.....	3%
Total	<u>18%</u>

That on the 14th day of October, 1915, a partial satisfaction of said judgment was duly made and endorsed on the margin of the Judgment Docket of said District Court of Blaine County for the above dividends of 18%, amounting to \$3,420.75; that said dividends are the only payments that have been made upon said judgment, and the only dividends that have been paid up to the date hereof by said Receiver.

W. E. SULLIVAN.

Subscribed and sworn to before me this 29th day of October, 1915.

(Seal)

LAUREL E. ELAM,
Notary Public,
Residence: Boise, Idaho.

My commission expires June 12, 1918.

Service of copy of foregoing Affidavit admitted this 29th day of October, 1915.

RICHARDS & HAGA,
Attorneys for Plaintiff.

Endorsed: Filed October 29th, 1915. W. D. McReynolds, Clark.

(Title of Court and Cause.)

BOND ON RESTRAINING ORDER PENDING
APPEAL.

Know All Men by These Presents, that we, American Surety Company of New York, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the following defendants in the above-entitled cause, to-wit: Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vincente Guisasola, Maggie J. Porter, F. R. Gooding, assignee of Richard Jones, and E. H. Baker, Charles Cuneo, assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli and Giulio Pallinio, Peter Snider, assignee of G. Guigliani, Mark Faladora, C. Juliean and Joe Fereta, F. W. Nitschke, Treasurer of F. O. E. Lodge, Sullivan & Sullivan, assignee of I. N. Sullivan, J. J. McFadden, administrator, with will annexed, of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, and E. Daft, Receiver of Idaho

State Bank, and assignee of J. S. Whitton, in the sum of Fifteen Thousand Dollars (\$15,000.00), for the payment of which, well and truly to be made, we bind ourselves and each of us, and all and each of our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 17th day of November, in the year of our Lord, one thousand nine hundred and fifteen.

The condition of this obligation is such, that,

Whereas, The said American Surety Company of New York, the above-named complainant, has prosecuted an appeal to the United States Circuit Court of Appeals from two certain interlocutory orders or decrees entered in the above-entitled cause and Court, on the 9th and 14th days of October, 1915, respectively; and,

Whereas, The said Court at the time said appeal was allowed, to-wit, on the 30th day of October, 1915, on application of said complainant and after hearing, in order to preserve the status quo of the parties and the subject matter of the litigation pending such appeal, entered an order restraining and enjoining the defendants named in the first paragraph hereof from collecting, enforcing the collection or taking any action whatsoever for the collection of a certain judgment recovered by said defendants, or for their use and benefit, in the District Court of the Fourth Judicial District for the State of Idaho, in and for Blaine County, on or about the 19th day of May, 1913, or proceeding further under a certain writ of

execution issued on said judgment to the Sheriff of Ada County, State of Idaho, upon condition that the above-named complainant and appellant should cause to be executed and filed a good and sufficient bond to said defendants, for the sum of \$15,000.00;

Now, Therefore, if the above-named complainant and appellant, American Surety Company of New York, shall prosecute its said appeal to effect and answer all damages and costs, if it shall fail to sustain its appeal, or if it shall be held that said order was improperly granted, and in that event shall pay the further sum of Fifty Dollars (\$50.00) as an attorney's fee, and shall pay to the said defendants when the decision of the Circuit Court of Appeals herein shall have become final the sum of \$13,614.00, with interest thereon at the rate of twelve per cent. (12%) per annum from the 9th day of December, 1915, in the event that the said interlocutory orders and decrees appealed from herein are affirmed in their entirety; and in the event that said Circuit Court of Appeals holds that the lower court erred in not deducting the amount of the dividends received, to-wit, \$3,420.75 from the said \$13,614.00, then said complainant will pay to said Mills et al., the sum of \$10,-193.25, less dividends if any hereafter received by said defendants, with interest at the rate of twelve per cent. (12%) per annum from December 9, 1915. But that in the event that said orders and decrees are reversed in their entirety, or in the event that, prior to the time that the decision of the said Circuit Court of Appeals herein becomes final, the Supreme

Court of the United States in the cause now pending there on Writ of Error, in which complainant herein is plaintiff in error and the State of Idaho, to and for the use and benefit of Clara Mills et al., is defendant in error, shall have held said judgment, the enforcement of which is sought to be enjoined in this action, invalid, then this obligation shall be void, otherwise to remain in full force and effect; provided, however, that the liability of the said complainant and appellant and the said Fidelity and Deposit Company of Maryland on this bond shall in no event exceed the said sum of \$15,000.00.

AMERICAN SURETY COMPANY
OF NEW YORK,

(Corporate Seal)

By Bradley Sheppard,
Resident Vice President.

Attest: McKeen F. Morrow, Resident Assistant
Secretary.

FIDELITY AND DEPOSIT COM-
PANY OF MARYLAND,

(Corporate Seal)

By Sidney C. Fuld,
Its Attorney in Fact.

Attest: Walter S. Bruce, General Agent.

The above bond is hereby approved both as to form and sufficiency of the sureties, and it is further ordered that on the filing of said bond in the District Court of the United States for the District of Idaho, Southern Division, counsel for complainant shall serve notice on the defendants named in said bond, and thereupon the order enjoining and restraining

said defendants herein made on the 30th day of October, 1915, shall be in full force and effect.

Dated this 20th day of November, 1915.

(Signed) FRANK S. DIETRICH,
Judge.

Endorsed: Filed Nov. 20, 1915. W. D. McReynolds, Clerk. By Pearl E. Zanger, Deputy.

(Title of Court and Cause.)

NOTICE.

To Clara Mills, and others, defendants in the above-entitled cause, and to Messrs. Sullivan & Sullivan, their attorneys of record:

You and Each of You Are Hereby Notified, that the bond in the sum of Fifteen Thousand Dollars (\$15,000.00) in your favor, required by that certain order of the above-entitled Court entered in said cause on or about the 30th day of October, 1915, was filed with the Clerk of said Court on the 20th day of November, 1915, together with an order of said Court approving the sufficiency of the same, both as to form and as to sureties and directing the service of notice of such filing upon you.

RICHARDS & HAGA,
McKEEN F. MORROW,
Solicitors for Complainant.

Service of the above notice and receipt of copy thereof admitted this 24th day of November, 1915.

SULLIVAN & SULLIVAN,
Solicitors for Defendants Clara Mills et al.

Endorsed: Filed Nov. 24th, 1915. W. D. McReynolds, Clerk.

(Title of Court and Cause.)

BOND ON APPEAL.

Know All Men by These Presents, that we, American Surety Company of New York, as principal, and Fidelity and Deposit Company of Maryland, as surety, are held and firmly bound unto the defendants named in the above-entitled cause in the just and full sum of Five Hundred Dollars (\$500.00), for the payment of which, well and truly to be made, we bind ourselves, and each of us, and our, and each of our, successors and assigns, firmly by these presents.

Sealed with our seals and dated this 30th day of October, 1915.

The condition of this obligation is such, that,

Whereas, the above-named American Surety Company of New York, complainant, has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from those two certain interlocutory orders or decrees entered in the above entitled cause in the District Court of the United States for the District of Idaho, Southern Division, on the 9th and 14th days of October, 1915, respectively;

Now, Therefore, if the above-named complainant, American Surety Company of New York, shall prosecute its said appeal to effect, and answer all costs, if it shall fail to sustain its said appeal, then the above obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

In Witness Whereof, the said principal and surety have caused their names to be hereunto subscribed

by their duly authorized officers or attorneys in fact, and their corporate seals affixed, the day and year first above written.

AMERICAN SURETY COMPANY
OF NEW YORK,

(Corporate Seal) By Bradley Sheppard,
Resident Vice President.

Attest: McKeen F. Morrow, Resident Assistant
Secretary.

FIDELITY AND DEPOSIT COM-
PANY OF MARYLAND,

(Corporate Seal) By Sidney C. Fuld,
Its Attorney in Fact.

Attest: Walter S. Bruce, General Agent.

Approved. (Signed) FRANK S. DIETRICH.

Endorsed: Filed October 30, 1915. W. D. Mc-
Reynolds, Clerk.

CITATION.

United States of America,—ss.

To Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H.

Whitmore, Augustus Anacabee, Vincente Guisasola, Maggie J. Porter, F. R. Gooding, assignee of Richard Jones and E. H. Baker, Charles Cuneo, assignee of Fidela Rsteinsia, Leo Bott, Thomas Johnson, Louis D. Paoli, and Guilio Pallinio, Peter Snider, assignee of G. Guigliani, Mark Faladora, C. Juliean and Joe Fereta, F. W. Nitschke, Treasurer of F. O. E. Lodge, Sullivan & Sullivan, assignee of I. N. Sullivan, J. J. McFadden, administrator, with will annexed, of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, E. Daft, Receiver of Idaho State Bank, assignee of J. S. Whitton, William Leonard, L. A. Dithmer, J. M. McPherson, Robert Franklin, J. F. McCoy, E. W. Kleinman, Friedman Company, Ltd., a corporation, Lucile Friedman, S. J. Benson, Aukema Drug Company, M. J. Daly, Bellevue State Bank, a corporation, assignee of Jos. Werry, Harry J. Allen, Mrs. W. J. Lamme, W. J. Lamme, Annie I. Harris (formerly Annie I. Miller), and George F. Steele, Insurance Commissioner of the State of Idaho:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, to be held in the City of San Francisco in the State of California, within thirty (30) days from the date of this Writ, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the District of Idaho, Southern Division, wherein American Surety

Company of New York is complainant, and you, and each of you, are defendants, to show cause, if any there be, why the orders and decrees in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness The Honorable Frank S. Dietrich, United States District Judge for the District of Idaho, this 30th day of October, A. D. 1915, and of the Independence of the United States the one hundred and fortieth year.

FRANK S. DIETRICH,

(Seal)

District Judge.

W. D. McREYNOLDS, Clerk.

Service of the foregoing Citation and receipt of a copy thereof admitted this 1st day of November, 1915.

SULLIVAN & SULLIVAN,

Solicitors for Defendants Clara Mills, W. P. Eastwood, A. J. Sullivan, Ceth D. Peacock, John C. Baugh, T. J. Reed, Joseph W. Fuld, Andrew McMonigle, Mrs. P. Donohue, Mrs. M. M. Tipton, Frank McDaniels, Russel B. Westman, Fred H. Povey, Louie Joe, Ching Bing, Harris Furniture Co., Mrs. C. E. Harris, Jim Riggi, E. R. Richards, Hailey Hose Co., Charles Cuneo, Frank Morris, Hailey Butcher Co., L. J. McConnell, Julia Haupt, John Mizer, John Seymour, Mrs. T. Povey, W. J. Oliver, Pelky & Co., John Pugel, Enrique E. Joywecheo, Margaret Sutherland, Ellen Walker, H. Whitmore, Augustus Anacabee, Vincente Guisasa, Maggie J. Porter, F. R. Gooding, assignee of

Richard Jones and E. H. Baker, Charles Cuneo, assignee of Fidela Rsteinsia Leo Bott, Thomas Johnson, Louis D. Paoli and Giulio Pallinio, Peter Snider, assignee of G. Guigliani, Mark Faladora, C. Juliaen and Joe Fereta, F. W. Nitschke, Treasurer of F. O. E. Lodge, Sullivan & Sullivan, assignee of I. N. Sullivan, J. J. McFadden, administrator, with will annexed, of the estate of Frank E. Foote, deceased, McFadden & Brodhead, Trustees, M. E. Mallory, Treasurer of Hailey Baseball Club, and E. Daft, Receiver of Idaho State Bank, assignee of J. S. Whitton.

EDWIN SNOW,

J. G. HEDRICK,

Solicitors for William Leonard, L. A. Dithmer, J. M. McPherson, Robert Franklin, J. F. McCoy, E. W. Kleinman, Friedman Company, Ltd., a corporation, Lucile Friedman, S. J. Benson, Aukema Drug Company, M. J. Daly, Bellevue State Bank, a corporation, assignee of Jos. Werry, Harry J. Allen, Mrs. W. J. Lamme, W. J. Lamme, Annie I. Harris (formerly Annie I. Miller).

J. H. PETERSON,

Attorney General,

By HERBERT WING,

Assistant,

Solicitors for Defendant, George F. Steele, Insurance Commissioner of the State of Idaho.

Endorsed: Filed Nov. 1, 1915. W. D. McReynolds, Clerk.

RETURN TO RECORD.

And thereupon it is ordered by the Court that the foregoing transcript of the record and proceedings in the cause aforesaid, together with all things thereunto relating, be transmitted to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and the same is transmitted accordingly.

Attest:

W. D. McREYNOLDS,

(Seal)

Clerk.

AMERICAN SURETY COMPANY OF NEW
YORK, a Corporation,

Appellant,

VS.

CLARA MILLS, GEORGE F. STEELE, Insurance
Commissioner of the State of Idaho, et al.,

Appellees.

I, W. D. McReynolds, Clerk of the District Court of the United States for the District of Idaho, do hereby certify that the above and foregoing transcript of pages from 1 to 106 inclusive contain true and correct copies of the Bill of Complaint, Bill of Complaint in Leonard vs. Mills et al., Equity No. 530; Motion for Preliminary Injunction, Motion to Dismiss by Defendants Sullivan & Sullivan, Motion to Dismiss by Defendant George F. Steele, Motion to Dismiss by Defendants Clara Mills et al., Opinion of the Court, Order Enjoining Defendants Sullivan & Sullivan and Geo. F. Steele, filed Oct. 9, 1915; Order Enjoining Defendants Clara Mills et al., filed

Oct. 14, 1915; Bond on Preliminary Injunction, Order Denying Motion to Dismiss, Assignment of Errors, Petition for Appeal, Order Allowing Appeal and Restraining Defendants Pending Appeal, Affidavit of J. H. Richards in Support of Application for Injunction Pending Appeal, Affidavit of W. E. Sullivan in Opposition to Such Application, Bond on Restraining Order Pending Appeal, and Order Approving Same, Notice of filing such Bond, Bond on Appeal, Citation, omitting therefrom the title except in the Bill of Complaint and in the Bill of Complaint of William Leonard in Cause No. 530, inserting in lieu of such title the words "Title of Court and Cause" and omitting the verification of pleadings, inserting in lieu thereof the words "Duly Verified," which together constitute the transcript of the record herein upon appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the costs of the record herein amount to the sum of \$125.20 and that the same has been paid by the Appellant.

Witness my hand and the seal of said Court affixed at Boise, Idaho, this third day of December, A. D. 1915.

(Seal)

W. D. McREYNOLDS,

Clerk.